S. HRG. 99-898

PROPOSALS TO REFORM THE ESCAPE CLAUSE

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

JULY 17, 1986

TITLE III of S. 1860, S. 1863, S. 2099

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PROPOSALS TO REFORM THE ESCAPE CLAUSE

THURSDAY, JULY 17, 1986

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 9:30 a.m., in room SD-215, Dirksen Senate Office Building, Hon. John C. Danforth presiding.

Present: Senators Danforth, Roth, Chafee, Heinz, Durenberger, Grassley, Long, Bentsen, Moynihan, Baucus, and Mitchell.

[The press release announcing the hearing, and the prepared written statements of Senators Heinz and Durenberger follow:]

[Press Release No. 86-056]

SENATE FINANCE COMMITTEE SETS ADDITIONAL HEARINGS ON TRADE ISSUES RAISED BY S. 1860

Senator Bob Packwood (R-Oregon), Chairman of the Senate Committee on Finance, announced today that the Committee will hold four additional hearings on trade issues presented by S. 1860. These hearings will be held in SD-215 of the Dirksen Senate Office Building. Senator Packwood noted that the Subcommittee on International Trade has already held five hearings (on May 13-15 and June 17, 1986) on a number of issues presented by S. 1860 and other bills which share its themes.

On July 17, 1986, at 9:30 a.m., the Committee will consider proposals to reform the escape clause, contained in section 201 of the Trade Act of 1974. Witnesses are asked to address specifically S. 2099, sponsored by Senators Roth, Wallop, and Durenberger, as well as S. 1863, principally sponsored by Senators Heinz, Baucus, and Domenici, incorporated in S. 1860 as Title III.

On July 22, 1986 at 9:30 a.m., the Committee will take up consideration of legislation relating to Section 301 of the Trade Act of 1974, which contains presidential authority to respond to unfair foreign trade practices. The hearing will focus primarily on S. 1862, principally sponsored by Senators Chafee and Bradley and incorportated in S. 1860 as Title III. The Committee is especially interested in comment on proposals to expand the scope of foreign practices actionable under Section 301 and to mandate retaliation within set time periods.

On July 23, 1986 at 9:30 a.m., the Committee will continue consideration of a possible new round of multilateral trade negotiations. Ambassador Yeutter outlined the Administration's approach to such a new round in his May 14, 1986 testimony before the Committee's Trade Subcommittee. Witnesses at the July 23, 1986 hearing are asked to address specifically the provisions of S. 1865, incorporated in S. 1860 as Title IV, and S. 1837. In particular, witnesses should include in their written statements such views as they may have on the following:

U.S. negotiating objectives;

Standstill or rollback agreements and the kinds of trade actions which should be covered in such agreements;

Multilateral mechanisms addressing persistent and excessive current account imbalances;

Transformation of existing quantitative restrictions into tariffs or auctioned quotas;

Congressional procedures for the implementation of such multilateral trade agreements as may be reached.

Finally, on July 30, 1986, at 9:30 a.m., the Committee will consider proposals to amend section 232 of the Trade Expansion Act of 1962 relating to imports which threaten to impair the national security. S. 1871, principally sponsored by Senators Grassley, Dixon and Dole, establishes a ninety day deadline for Presidential actions under section 232, and is incorporated in S. 1860 as Title X.

SENATOR JOHN HEINZ
HEARING ON PROPOSALS TO MODIFY SECTION 201 OF THE TRADE ACT OF 1974
JULY 17, 1986

OPENING STATEMENT

Mr. Chairman, I welcome this hearing today because consideration of the problems inherent in section 201 is long overdue. S. 1860 contains a title on this subject similar to legislation I proposed three years ago, and I hope the Committee will act favorably on it.

Before that can happen, however, we need to peel away some of the unfortunate -- and inaccurate -- rhetoric clinging to this issue, particularly on the questions of adjustment plans and the role of the Executive.

First, this proposal is about adjustment, not industrial policy. Industrial policy means government selection of "winners" and "losers" followed by the adoption of policies to enforce those selections. It is the government directing the market.

Adjustment is the reverse process. An industry comes to the government seeking help. It has identified its own problems and wants to deal with them. That happens now under current law. What does not happen now is the government asking the industry, in any systematic way, what it intends to do for itself. And it has no effective means of enforcing any commitments the industry makes.

The adjustment proposal in S. 1860 simply provides a mechanism for those commitments to be discussed and made, with government assistance conditioned on their implementation. It is an industry

-- labor and management -- process. The government does not -- and cannot -- direct the process or tell the industry precisely what it must do.

There are no doubt an infinite number of ways to structure such a process. S. 1860 strikes a balance. It preserves a framework that allows an open, cooperative process where all parties are working together in good faith to arrive at the best course of action for an industry in trouble. But it also contains protections for the government and for consumers if all parties are not acting in good faith.

The second issue is the role of the Executive Branch in granting relief. Contrary to popular belief, this debate is not about Presidential discretion. S. 1860 gives the President authority to alter any import relief recommended by the ITC. It limits him only by requiring him to come back to Congress if he wants to provide substantially less relief than was recommended.

The real issue is the failure of the interagency process to address import relief and adjustment in a creative and constructive fashion. ITC recommendations reach the President after an interagency process that is virtually guaranteed to produce a least-common-denominator political solution. If you have to satisfy the Departments of State, Treasury, Labor, and Commerce as well as OMB, USTR, and the Council of Economic Advisors, you are unlikely to produce anything but political cream of wheat that makes no economic sense. Most of the time we end up giving an industry half a loaf that provides no effective "breathing space" for the industry to adjust but encourages them to try anyway.

The history of this statute is replete with examples of inadequate relief and failure to adjust. Today we will hear from the only success story this law has ever produced -- Harley Davidson -- which, not coincidentally, is the only petitioner to receive the full relief recommended by the ITC.

An equally good example of the failure of the Cabinet review process is the specialty steel case, where half the industry was given effective relief and the other half was not. The entirely predictable result was notable progress for some companies and very little for others.

Mr. Chairman, we need to face the fact that the government is going to be presented with these dilemmas whether we change the law or not. Companies will continue to define their problems in terms of imports and will seek government help whether we want them to or not. Like it or not, we are determining the fate of American industries every time we employ this law. All S. 1860 is suggesting is that we do it intelligently.

We need a statute that will provide assistance when injury is suffered or threatened, but which will also insist that the industry confront its problems directly and deal with them, recognizing that could mean movement out of an industry just as it could mean a restoration of competitiveness. If we do not have a statute that emphasizes adjustment, industries will come directly to the Congress, as the textile industry has done. And that, I am afraid, will no more lead to intelligent adjustment than the current interagency process does.

OPENING STATEMENT OF SENATOR DAVE DURENBERGER

Mr. Chairman, today's hearing will consider two fundamentally different approaches to trade policy and the role, if any, that the President should play in coordinating our nation's trade policy. There are many aspects of S. 1863 and S.2099 that are compatible. But the fundamental and incompatible difference between these bills is whether the President and Congress will cede their authority to establish a national trade policy to the International Trade Commission. My cosponsorship of S. 2099 suggests that my answer to that question is No.

There is not a single member of this Committee who has not heard firsthand how foreign competition is hurting our domestic economy. We've all endured plant closings, unemployment and bankruptcies in our states, in part as a result of increased foreign competition. The Iron Range in my state has been in a prolonged depression because of competition from abroad and the decline in the domestic steel industry. The depression in agriculture is traceable to protectionist policies in the European Community and development policies of many Third World countries.

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The solutions to these problems are multifaceted. Where foreign business competes unfairly and dumps in our market, we have the tools in place to stop such unfair competition. And I am pleased to note that since Clayton Yeutter became our Special Trade Representative, we have self-initiated several section 301 cases.

We also need to get down in the trenches with our trading partners and engage in tough negotiations to open up many more foreign markets to our domestic industries. Only through the concerted and coordinated efforts of the U.S. Trade Representative can we ensure that barriers to American imports are taken down and that free trade is not a one-way street.

But I am seriously concerned that if we adopt legislation that makes the President the rubber stamp of the International Trade Commission in Section 201 cases, we will do serious injury to our efforts to coordinate our trade policy and will open the door to an all out trade war.

When we consider the issue of Presidential discretion in Section 201 cases, we must remember we are not dealing with the issue of unfair trade practices. We are instead dealing with situations where the effects of foreign competition have negatively impacted domestic industries.

Durenberger 7/17

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As we all know, some of our industries have been hurt by foreign competition because of decisions made in the United States. Whether it was management's refusal to invest in new and more efficient plant and equipment; whether it was poor quality control on the assembly line; or whether it was a matter of not producing the products that the American consumer wanted; foreign companies in the past 15 years have become a major competitive factor in nearly every industry.

I believe that any decision to protect our industries from foreign competition should always be taken reluctantly. There is always a price to be paid when we make such a decision. It is nearly always the case that American consumers must pay higher prices when we decide to restrict access to our market in order to protect a particular industry.

And we always risk the possibility that a restriction on the importation of a particular product will result in retaliation by the affected country. The result, too often, is that jobs protected in one industry are protected at the expense of jobs in another industry.

Finally, it should not go unsaid, that there are always foreign policy implications that must be considered in determining whether to restrict foreign access to our market. Although I do not believe that the State Department should be setting our international trade policy, we cannot ignore the foreign policy and national security implications of trade protection decisions which, on their surface, appear narrowly defined as jobs and profits for a single industry.

For these reasons, I think it best that the President should retain full discretion to grant or deny relief in section 201 cases. He is best equipped to assess the broad implications of such decisions. And when we disagree with that decision, we should retain the right to override that decision.

Senator DANFORTH. This is a hearing on section 201 and legislative proposals for improving section 201. There have been a couple of bills that have been introduced that deal with this subject, Senate bill 1860 and its component section, Senate bill 1863, and then Senate bill 2099, which Senator Roth and others introduced, both trying to deal with various aspects of section 201.

My own view of section 201 is that at the time of the shoe case there was created a real question as to whether there was such a thing as section 201. I think there still is. But the problem in that case was that an industry with massive penetration—over 75-percent import penetration—took its case to the International Trade Commission, won its case, and ended up with absolutely nothing.

So the question that we attempt to raise in S. 1860 is whether there can be some constraints on absolute Presidential discretion to do nothing in response to a safeguard case which is successfully prosecuted through the International Trade Commission.

We have an excellent group of witnesses today. I do want to say, as everyone knows, the tax conference begins today, so the attendance might be a kind of a floating attendance on the part of members of the committee.

I think Senator Moynihan has a comment that he wants to make on an unrelated subject.

Senator MOYNIHAN. Yes; thank you, Mr. Chairman, on an unrelated subject and, well, a point of personal privilege if I could.

Yesterday, we had the honor to have before us the distinguished Commissioner of Labor Statistics who testified on the subject of productivity and its impact on exports and imports, and the general direction of those matters in recent years.

I asked a question of Dr. Norwood about the fact that our national statistics showed that median family income in our country has been flat for 16 years. And there cannot have been a 16-year period in our history in which this was so. And what did the Bureau think of that matter. And Dr. Norwood, to my disappointment, responded that, oh, yes, she had read that article in the New York Times. Indeed, there was an article in the Sunday New York Times, a good one, by Mr. Stephen Greenhouse. But the matter I brought up was, I said to her at the time, on page 260 of the Economic Report of the President, the standard data of the Council of Economic Advisers from the Bureau of Labor Statistics.

It happens that the Bureau of Labor Statistics was established in 1886, if I recall, for the specific purpose of drawing up the city workers' family budget. It was the hope of working people in those days that if the Government would declare what it took to raise a family in the city you could bargain for wages against that amount.

And in a century it seems that BLS could care less what people's incomes were.

Dr. Norwood said that the subject need to be disaggregated, that family composition had changed. She said this, she said that. She said the Bureau knew nothing and could care less.

Mr. Chairman, I wonder if we might not consider having Dr. Norwood back after she has had a chance to rethink this matter, and tell us what has happened to family wages, which is what we are again talking about when we talk about employment, and income, and imports.

Senator **Danforth**. Well, that was a full committee hearing that was organized by the chairman of the committee. I would suggest that you bring that up with Senator Packwood.

Senator **Moynihan**. Which I will do, but I did want the occasion of mentioning it here.

Could I just say also, Mr. Chairman, that you were characteristically modest on S. 1860 on the question of as to what is your legislation and I will be privileged of cosponsoring it with you.

Senator **Danforth**. The Danforth-Moynihan and many others bill.

Senator **Moynihan**. Many others.

Senator **Danforth**. Senator Heinz, do you have a comment?

Senator **Heinz**. Mr. Chairman, I have a statement I would like to put in the record in its entirety if I may.

Senator **Danforth**. Without objection.

Senator **Heinz**. And I just want to make an observation before we hear our first witness.

Today, your hearing is on section 201, and S. 1860, which you and others, including myself. have introduced, contains a provision on section 201 that I understand the administration is going to object to because they consider it some kind of industrial policy.

I think that is a gross mischaracterization unless every action the administration takes in the tax and economic field is also to be considered industrial policy.

What I think our provision is about is not about picking winners and losers. That is industrial policy. Our provision is about adjustment, which means an industry trying to help itself. Industries come to the Government all the time. They come to this committee to ask for tax breaks. They go down to the executive branch to ask for import relief. All we do in S. 1860—in your bill, Mr. Chairman—is to say, if you are going to come to the Government and ask for something the Government does grant—various kinds of import relief—we want you to try to help yourself as well, and come at us with an adjustment plan.

Whatever industrial policy is, this is the opposite. If industrial policy is picking winners and losers, this is saying, help yourself if you are going to come to the Government to petition for something it is your right to petition for.

And the main thing about S. 1860 is that it provides a process by which those kinds of issues can be openly explored, by which commitments can be made, and by which they can be held to in good faith.

A second issue I think that is going to be a part of this debate is Executive discretion and the role of the executive branch in granting relief. Contrary to popular belief, in fact, what is in S. 1860 is really not about Presidential discretion. S. 1860 retains Presidential discretion. The President has the authority under our bill to alter any import relief recommended by the International Trade Commission.

The only limitation upon him is if he alters it in a way that results in substantially less relief than was recommended, and if there is an agreement by the industry to adjust, to bootstrap itself, then the President has to submit that to the Congress for its approval.

In my view, the real issue here is dealing with the current process that now exists in 201. I refer to the interagency process where State, Treasury, Labor, Commerce, OMB, USTR, the Council of Economic Advisers all have their bite at the apple of import relief recommended by the U.S. International Trade Commission. And by the time the apple gets to the President's desk there is nothing left of it except a few pieces of skin and a few seeds.

I don't think it is any unusual turn of events that the two industries that have, in fact, received full ITC relief have been success stories.

The first example is Harley Davidson which made history by actually getting the President to grant the import relief the ITC recommended. And it is a success story.

The second, ironically, is the half of the specialty steel industry that got the full import relief that was recommended by the ITC. The other half of the specialty steel industry did not. While both halves are now under the President's steel program, the half that did not get full relief, that got the diminishing tariff, is the part that is having the greatest difficulty staying competitive. Imports in those products have risen steadily. I think if we ever wanted a test case, an example of what works and does not work, we should be indebted to the administration because they have in the specialty steel decision 3 years ago given us the perfect laboratory. The results are in and they are clear.

I hope that our witnesses will take a very hard look at the laboratory and not talk just from economic theory, because we can do better than that. We can deal with economic reality.

So, Mr. Chairman, I welcome these hearings. I commend you for pressing for them and I look forward to hearing from our witnesses.

Senator DANFORTH. Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

The point here, very simply, is that section 201—the escape clause—is not working. We all know of several instances when the ITC has ruled unanimously to grant relief to a certain industry—copper, for example, or shoes. And the President, unfortunately, utilizing his full discretion under the escape clause, virtually thumbed his nose at the ITC.

We have a problem. The question is, What do we do about it?

The whole point of the bill we are considering today is to try to correct that problem; to try to find a way to induce the President to more closely follow the recommendations of the International Trade Commission.

There probably are legitimate questions that can be raised about some provisions of this bill. I think it is probably true that this bill goes a long way—perhaps too far—in curbing Presidential discretion. After all, the President is the chief architect, under article 2 of the Constitution, of foreign policy. He has the right to take foreign policy considerations in view when trying to decide whether or not this country should take action against some other country.

I hope that, when the hearing is concluded, we are able to resolve some of these conflicts a little bit more judiciously. I hope that supporters and opponents of this bill, do not dig their heels in too much, but, rather, try to find a compromise that makes sense so that the escape clause will work much better than it has been working in the past.

Mr. Chairman, I think this is a good opportunity to approach this issue with good faith and a very judicious attitude so that we find a common solution.

Senator DANFORTH. Senator Grassley.

Senator GRASSLEY. Mr. Chairman, considering the legitimacy as Senator Baucus did of the foreign policy decisions of the President, the fact is for too many decades the President has had too much discretion. And those foreign policy considerations and other national interest have been so paramount that the United States has developed a reputation of a paper tiger in our international trade negotiations.

We have, in fact, cried wolf too many times, and it is all in the vein that the President has considered—and I shouldn't say this President, but the Presidency, generally—has considered foreign policy issues to the point that it has deteriorated our economy so that the rehabilitation of the domestic economy has now weakened America's leadership in foreign affairs.

And to recapture that leadership, it is very necessary that our economic base be rebuilt. And so whereas the goal of the President, and the Presidency generally, to give foreign policy consideration undue consideration in the past, as legitimate as that might have been at the time, there have been a fallout detrimental to the long-term national interest of this country, and it has weakened our position in bargaining. And I hope that we have turned the corner where there is a concensus now that we have to be much more hardnosed in our approach, both bilaterally, multilaterally, and then through the international organizations. And I think that the only way we need to protect, I think what we have to do to protect ourselves from the trend continuing, but also to reverse past policy that has deteriorated our position is to narrow the President's discretion in the future. Not exclude foreign policy considerations, but narrow the President's discretion in their consideration.

Senator DANFORTH. Senator Mitchell.

Senator MITCHELL. Thank you, Mr. Chairman.

Throughout our history, the United States has supported free and fair trade with foreign competitors. Because of this our Nation always has been hesitant to restrict imports. However, we have recognized that American firms are occasionally so seriously injured by rapid and dramatic import surges that they require temporary assistance to adjust to a new competitive situation.

This concept of temporary relief is so basic to our concept of free trade that it was incorporated as article 19 of the General Agreement on Tariffs, and Trade and in section 201 of our Trade Act of 1974.

When properly administered by the executive branch, section 201 has proven to be an effective mechanism to provide American industry with the breathing space it occasionally needs to adjust to foreign competition.

Unfortunately, this administration has not considered it necessary to enforce section 201. Occasionally, politically opportune decisions have been made, but the President has too often ignored clear findings of injury under section 201. In particular, the decisions of the President in the copper and nonrubber footwear cases have convinced many Members of Congress that section 201 is an irrelevant part of our trade laws under this administration. That is the reason this bill is before the committee today. And I am pleased to be a cosponsor of legislation to restore the escape clause.

By encouraging beleaguered industries to development adjustment plans, this legislation would restore the original purpose of section 201: to help American industries adjust to rapid increases in import competition.

By limiting Presidential discretion in cases where the ITC has approved an adjustment plan, it insures fair treatment for all American firms. And by increasing the number of possible remedies available to the President, it actually decreases reliance on direct import restrictions. In all of these ways, S. 1863 makes section 201 more compatible with the principles of free trade for which this country has always stood.

I encourage my colleagues to join me in supporting this important free and fair trade legislation.

Thank you, Mr. Chairman.

Senator DANFORTH. Senator Bentsen, do you have a statement?

Senator BENTSEN. No. Thank you, Mr. Chairman.

Senator DANFORTH. We are pleased to have Senator Evans with us this morning. Senator Evans.

STATEMENT OF HON. DANIEL J. EVANS, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator EVANS. Thank you, Mr. Chairman.

I am pleased to be here to testify before this committee and approach this not only from a philosophical feeling about international trade and the U.S. position in the world market, but also as a former chief executive who has some considerable concern about this legislation and what it would do to the discretion of a chief executive in matters which clearly are of critical importance to him.

Mr. Chairman, the proposed change of section 201, or escape clause authority, is one of the most important provisions of this omnibus trade bill or perhaps any trade bill.

Mr. Chairman, I oppose the proposed changes to sections 201 through 203 in title 111 of S. 1860. I believe they are unnecessary. They unduly limit the discretion of the President. They will ultimately do more harm than good to the trade interests of this country.

Ideally, I think the status quo is preferable to any proposed bill in Congress today. But I recognize that this provision will be the subject of much debate over the next few months and some legislation may emerge.

For that reason, I would prefer the approach in the bill drafted by Senator Roth, S. 2099, and cosponsored by Senators Durenberger and Wallop. I would like to be added today as a cosponsor to that bill.

Let me begin by saying that section 201 has worked. The criticism of the statute has focused on the President's decision not to grant import relief in a few limited cases, mainly, footwear and copper. But the record shows that this administration has granted import relief in four out of six cases in which the ITC has recommended such relief to the President. Since 1979, over two administrations, the relief percentage has been 8 out of 11, and that is not a poor ratio of success.

The recent decision of the President to impose a 35-percent tariff on red cedar shake and shingle imports from Canada has shown the sensitive nature of these questions.

The quick response announced by Canada on books, computer parts, and Christmas trees clearly showed that retaliation is imminent and real from our trading partners.

Could anyone on this committee foresee as little as 10 months ago, when the shake and shingle association from my State filed a petition for import relief with the ITC, that this product would become the hottest issue in United States-Canada trade relations? Probably not. I certainly could not.

The scope of an ITC investigation is narrow. The statute limits its parameters to factors such as whether imports are increasing, whether the domestic industry has been injured, and whether imports have been the substantial cause of such injury.

The ITC cannot and does not consider how the import relief would affect the welfare of the ultimate American consumer, increased cost to downstream industries, and our foreign policy interests. Only the President is able to consider such factors.

Mr. Chairman, import relief under section 202 is meant to be temporary and digressive. Article 19 of the GATT was meant to authorize protective actions that are limited in application and duration.

Facilitating the adjustment of the industry to be able to compete more effectively in international markets is a key goal. The statute is not meant to be a broad umbrella under which government, industry and labor can enter into extensive planning and consultation arrangements to become more competitive.

If Congress is serious about such a concept, it should be done elsewhere in a broader policy context, not under a section of GATT that is meant to be an escape from normal practice.

As a former chief executive, Mr. Chairman, I believe quite strongly that the President should have adequate discretion in these decisions. The President's hands should not be tied in these sensitive trade matters that often have broad impact.

The ITC's role is and should be limited to that of analyzing international trade flows, their impact on our domestic industries, and providing such information and recommendations to the President, as well as to the Congress. It should not engage in broad, policymaking functions.

Mr. Chairman, let me just read a brief paragraph from remarks by Paula Stern, the chairwoman of the U.S. International Trade Commission.

She said:

> Our role is limited to determining whether or not the petitioning industry meets the statute's injury standard, and then if it does, crafting a measure that would remedy that injury.
>
> We do not consider such factors as the cost of import restrictions to consumers or to other domestic industries, the possibilities of retaliation, or foreign policy consequences.

> To eliminate the President's discretion implies that such concerns should not be counted in import relief decisions.

And I think that patently and on the face of it makes this bad legislation.

The ITC should be responsive to interests and requests of Congress, especially of the committees like this with jurisdiction over trade and tariff issues. You have jurisdiction over the ITC's budget and confirmation of its commissioners. But the ITC's primary responsibility in section 201 petitions is to make its recommendations to the President, not to the Congress.

As a former governor, I believe I know something about independent commissions. And I have suffered a good deal from time to time with independent commissions which I appointed. In fact, on a number of occasions I had appointed all members of an independent commission and then sought some change in policy that I thought was important, only to have that independent commission totally for anything I chose to do.

Although the President is elected by a popular majority, it may take time for him to appoint people who share his economic beliefs. It is quite conceivable that a future Presidential election would be fought on the basis of trade policy, international trade policy.

A President might very well be elected who had significantly different views than the ITC on trade matters, and would carry into office those views with perhaps an overwhelming support of the American electorate.

But the six commissioners of the ITC serve for 9-year terms if they serve their full term. Some are appointed to fill unexpired terms, of course, and no more than three members can be of the same political party.

The facts are that it would take all of the President's first term to appoint, conceivably, a majority of the members of the ITC, and to change policies that otherwise might be in direct conflict with the President popularly elected and elected precisely on the trade issues which he could not then carry out if this act were to be passed.

The ITC is meant to be bipartisan. But the turnover of commissioners may be very slow in the early years of an administration, whether Democratic or Republican.

The administration may have to consider controversial section 201 recommendations early in its term. All the more reason not to tie the President's hand by requiring him to impose the ITC-recommended tariffs or quotas, or something substantially equivalent.

In sum, Mr. Chairman, I believe that title 111 of S. 1860 is unnecessary and will prove counterproductive to U.S. trade interests.

This is especially true as we are entering a new round of multilateral trade negotiations. This is not a trade enhancement, as sponsors of this title allege, but instead trade contraction.

If the Congress does decide to change our escape clause legislation, let's take the more moderate course of action in S. 2099, such as tightening the requirements for submission of adjustment plans, better monitoring of actual adjustment measures by the administration, and provision of antitrust relief as a means of relief from import competition. But I am afraid, Mr. Chairman, if we were to adopt S. 1860 we would simply be jumping off our ship into unknown and stormy waters.

We ought to always remember that while we seek relief on occasion for embattled domestic industries there is always a cost to trade restriction. That cost is primarily to consumers. And I think we, as representatives of consumers, as well as businesses and industries and job holders in this country, owe it to those consumers to be candid in letting them know that as we undertake to restrict international trade and to contract the international markets there is going to be a cost to them, just as there was in the voluntary restrictions on automobile imports where the cost over a several year period was estimated to be $5 billion, all borne by U.S. consumers.

Our actions internationally should expand the global market, not contract it. It is better, Mr. Chairman, to have even a somewhat smaller share of a booming and expanding world market than a large share of world poverty.

Thank you.

Senator **Danforth**. Thank you, Senator Evans.

[The prepared written statement of Senator Evans follows:]

STATEMENT OF SEN. DANIEL J. EVANS

LEGISLATION ON SECTION 201: S. 1860 AND S. 2099
SENATE COMMITTEE ON FINANCE
JULY 17, 1986

MR. CHAIRMAN, I APPRECIATE THE CHANCE TO TESTIFY BEFORE THE COMMITTEE TODAY ON THIS IMPORTANT LEGISLATION. THE PROPOSED CHANGE OF SECTION 201, OR ESCAPE CLAUSE, AUTHORITY IS ONE OF THE MOST IMPORTANT PROVISIONS OF THE OMNIBUS TRADE BILL.

MR. CHAIRMAN, I OPPOSE THE PROPOSED CHANGES TO SECTIONS 201 THROUGH 203 IN TITLE III OF S. 1860. I BELIEVE THEY ARE UNECESSARY AND UNDULY LIMIT THE DISCRETION OF THE PRESIDENT. THEY WILL ULTIMATELY DO MORE HARM THAN GOOD TO THE TRADE INTERESTS OF THIS COUNTRY. IDEALLY, I THINK THE STATUS QUO IS PREFERABLE TO ANY PROPOSED BILL IN THE CONGRESS TODAY. BUT I RECOGNIZE THIS PROVISION WILL BE THE SUBJECT OF MUCH DEBATE OVER THE NEXT FEW MONTHS AND SOME LEGISLATION MAY EMERGE. FOR THAT REASON, I WOULD PREFER THE APPROACH IN THE BILL DRAFTED BY SENATOR ROTH, S. 2099, AND COSPONSORED BY SENATORS DURENBERGER AND WALLOP. I WOULD LIKE TO BE ADDED TODAY AS A COSPONSOR TO THAT BILL.

LET ME BEGIN BY SAYING THAT SECTION 201 HAS WORKED. THE CRITICISM OF THE STATUTE HAS FOCUSED ON THE PRESIDENT'S DECISION NOT TO GRANT IMPORT RELIEF IN A FEW LIMITED CASES -- MAINLY FOOTWEAR AND COPPER. BUT THE RECORD SHOWS THAT THIS ADMINISTRATION HAS GRANTED IMPORT RELIEF IN 4 OUT OF 6 CASES IN WHICH THE ITC HAS RECOMMENDED SUCH RELIEF TO THE PRESIDENT. SINCE 1979, OVER TWO ADMINISTRATIONS, THE RELIEF PERCENTAGE HAS BEEN 8 OUT OF 11. THAT'S NOT A POOR RATIO OF SUCCESS.

THE RECENT DECISION OF THE PRESIDENT TO IMPOSE A 35 PERCENT TARIFF ON RED CEDAR SHAKE AND SHINGLE IMPORTS FROM CANADA HAS SHOWN THE SENSITIVE NATURE OF THESE QUESTIONS. THE QUICK RESPONSE ANNOUNCED BY CANADA ON BOOKS, COMPUTER PARTS, AND CHRISTMAS TREES CLEARLY SHOWED THAT RETALIATION IS IMMINENT AND REAL FROM OUR TRADING PARTNERS. COULD ANYONE ON THIS COMMITTEE FORESEE 10 MONTHS AGO, WHEN THE SHAKE AND SHINGLE ASSOCIATION FROM MY STATE FILED A PETITION FOR IMPORT RELIEF WITH THE ITC, THAT THIS PRODUCT WOULD BECOME THE HOTTEST ISSUE IN U.S.-CANADA TRADE RELATIONS? PROBABLY NOT. I CERTAINLY COULDN'T.

THE SCOPE OF AN ITC INVESTIGATION IS NARROW. THE STATUTE LIMITS ITS PARAMETERS TO FACTORS SUCH AS: WHETHER IMPORTS ARE INCREASING, WHETHER THE DOMESTIC INDUSTRY HAS BEEN INJURED, AND WHETHER IMPORTS HAVE BEEN THE SUBSTANTIAL CAUSE OF SUCH INJURY. THE ITC CAN'T AND DOESN'T CONSIDER HOW THE IMPORT RELIEF WOULD AFFECT THE WELFARE OF THE ULTIMATE AMERICAN CONSUMER; INCREASED COST TO DOWNSTREAM INDUSTRIES; AND OUR FOREIGN POLICY INTERESTS. ONLY THE PRESIDENT IS ABLE TO CONSIDER SUCH FACTORS.

MR. CHAIRMAN, IMPORT RELIEF UNDER SECTION 202 IS MEANT TO BE TEMPORARY AND DIGRESSIVE. ARTICLE 19 OF THE GATT WAS MEANT TO AUTHORIZE PROTECTIVE ACTIONS THAT ARE LIMITED IN APPLICATION AND DURATION. FACILITATING THE ADJUSTMENT OF THE INDUSTRY TO BE ABLE TO COMPETE MORE EFFECTIVELY IN INTERNATIONAL MARKETS IS A KEY GOAL. THE STATUTE ISN'T MEANT TO BE A BROAD UMBRELLA UNDER WHICH GOVERNMENT, INDUSTRY, AND LABOR CAN ENTER INTO EXTENSIVE PLANNING AND CONSULTATION ARRANGEMENTS TO BECOME MORE COMPETITIVE. IF CONGRESS IS SERIOUS ABOUT SUCH A CONCEPT, IT SHOULD BE DONE ELSEWHERE IN A BROADER POLICY CONTEXT -- NOT UNDER A SECTION OF THE GATT THAT IS MEANT TO BE AN ESCAPE FROM NORMAL PRACTICE.

AS A FORMER CHIEF EXECUTIVE, MR. CHAIRMAN, I BELIEVE QUITE STRONGLY THAT THE PRESIDENT SHOULD HAVE ADEQUATE DISCRETION IN THESE DECISIONS. THE PRESIDENT'S HANDS SHOULD NOT BE TIED IN THESE SENSITIVE TRADE MATTERS THAT OFTEN HAVE BROAD IMPACTS. THE ITC'S ROLE IS AND SHOULD BE LIMITED TO THAT OF ANALYZING INTERNATIONAL TRADE FLOWS, THEIR IMPACT ON OUR DOMESTIC INDUSTRIES, AND PROVIDING SUCH INFORMATION AND RECOMMENDATIONS TO THE PRESIDENT, AS WELL AS TO THE CONGRESS. IT SHOULD NOT ENGAGE IN BROAD, POLICY-MAKING FUNCTIONS.

THE ITC SHOULD BE RESPONSIVE TO INTERESTS AND REQUESTS OF THE CONGRESS, ESPECIALLY OF THE COMMITTEES LIKE THIS WITH JURISDICTION OVER TRADE AND TARIFF ISSUES. YOU HAVE JURISDICTION OVER THE ITC'S BUDGET AND CONFIRMATION OF ITS COMMISSIONERS HERE. BUT THE ITC'S PRIMARY RESPONSIBILITY IN SECTION 201 PETITIONS IS TO MAKE ITS RECOMMENDATIONS TO THE PRESIDENT, NOT THE CONGRESS.

AS A FORMER GOVERNOR, I ALSO BELIEVE I KNOW SOMETHING ABOUT INDEPENDENT COMMISSIONS. ALTHOUGH THE PRESIDENT IS ELECTED BY A POPULAR MAJORITY, IT MAY TAKE TIME FOR HIM TO APPOINT PEOPLE WHO SHARE HIS ECONOMIC BELIEFS. THE SIX COMMISSIONERS OF THE ITC SERVE FOR 9-YEAR TERMS IF THEY SERVE THE FULL TERM. SOME, LIKE MS. LIEBELER, ARE APPOINTED TO FILL UNEXPIRED TERMS. NO MORE THAN THREE COMMISSIONERS MAY BE MEMBERS OF THE SAME POLITICAL PARTY.

IT IS MEANT TO BE BIPARTISAN. BUT THE TURNOVER OF THE COMMISSIONERS MAY BE SLOW IN THE EARLY YEARS OF AN ADMINISTRATION -- WHETHER IT BE REPUBLICAN OR DEMOCRATIC. AND AN ADMINISTRATION MAY HAVE TO CONSIDER CONTROVERSIAL SECTION 201 RECOMMENDATIONS EARLY IN ITS TERM. ALL THE MORE REASON NOT TO TIE THE PRESIDENT'S HAND BY REQUIRING HIM TO IMPOSE THE ITC-RECOMMENDED TARIFFS OR QUOTAS, OR SOMETHING SUBSTANTIALLY EQUIVALENT.

IN SUM, MR. CHAIRMAN, I BELIEVE THAT TITLE III OF S. 1860 IS UNNECESSARY AND WILL PROVE TO BE COUNTERPRODUCTIVE TO U.S. TRADE INTERESTS. THIS IS ESPECIALLY TRUE AS WE ARE ENTERING A NEW ROUND OF MULTILATERAL TRADE NEGOTIATIONS. THIS IS NOT "TRADE ENHANCEMENT", AS SPONSORS OF THIS TITLE ALLEGE, BUT INSTEAD "TRADE CONTRACTION." IF THE CONGRESS DOES DECIDE TO CHANGE OUR ESCAPE CLAUSE LEGISLATION, LET'S TAKE THE MORE MODERATE COURSE OF ACTION IN S. 2099 -- SUCH AS TIGHTENING THE REQUIREMENTS FOR SUBMISSION OF ADJUSTMENT PLANS, BETTER MONITORING OF ACTUAL ADJUSTMENT MEASURES BY THE ADMINISTRATION, AND PROVISION OF ANTITRUST RELIEF AS A MEANS OF RELIEF FROM IMPORT COMPETITION. BUT LET'S NOT JUMP OFF THE SHIP INTO UNKNOWN AND STORMY WATERS.

Senator DANFORTH. Your position, as I understand it, is that the President's discretion should be absolute, and that he should retain the option of taking no action of any kind in response to a successful case before the ITC.

Senator EVANS. I believe so. But I also believe that the experience and the record, if it is looked at in its entirety, shows both this President and his predecessors have acted in a very substantial percentage of the cases in line, or generally in line with the ITC's recommendation.

But let me reiterate what Miss Stern said. The ITC only takes into account whether the petitioning industry is hurt.

> We do not consider very, very important factors which the President only can consider: the cost of import restrictions to consumers, the cost of import restrictions to other domestic industries, and the possibility of retaliation by other nations, and the foreign policy consequences.

And, yes, Mr. Chairman, I think those are sufficiently large elements, along with the harm to the particular industry involved, that the President ought to be given that discretion. Indeed, I do.

Senator DANFORTH. Any questions for Senator Evans?

Senator ROTH. Mr. Chairman, I regret that I arrived late and did not have the opportunity to make an opening statement. But I do want to take this opportunity to congratulate Senator Evans for what I consider a very insightful perceptive statement.

Part of my concern, Senator Evans, is that many people are confusing injury under 201 as being unfair injury, and would react accordingly, when, in fact, this is fair competition. Now that does not mean that we don't have a problem and shouldn't meet that challenge, because we should. I think it is one of the most important problems we face. But I want to express my appreciation for your being here today, for your cosponsorship of legislation which I think better meets the need of international competitiveness and opening up of opportunities rather than the negative approach. So we look forward to working with you.

And I would ask that the full statement of analysis of legislative proposals which you made reference to, by Paula Stern, be included in the record and my opening statement on my piece of legislation be placed into the record.

Senator DANFORTH. Without objection.

[The analysis of legislative proposals to change section 201 and Senator Roth's statement in the Congressional Record, February 25, 1986 follows:]

ANALYSIS OF LEGISLATIVE PROPOSALS TO CHANGE SECTION 201

by

Paula Stern, Chairwoman

U.S. International Trade Commission

May 29, 1986

INTRODUCTION

The economic hardship created by our foreign trade deficit has forced a critical assessment of U.S. trade policy. As a result, as a recent news report noted, the introduction of comprehensive trade law reform bills in Congress has become a cottage industry.

Not surprisingly, nearly every significant piece of legislation would amend section 201 of the Trade Act of 1974. As you may know, under this statute a domestic industry, with a recommendation from the U.S. International Trade Commission and action by the President, can obtain temporary import relief. This statute is also called the escape clause, because it allows the U.S. to escape from its obligations to its trading partners not to impose new restrictions on imports.

The suggested changes to section 201 range from minor reforms to some imaginative proposals that would require more fundamental changes. I would like to offer you some of my views on many of these changes. Before doing that, I will outline the current procedures followed in section 201 investigations and discuss the reasons for the interest in reforming the escape clause.

I speak with much experience with section 201. I have served on the Commission since 1978, and I have participated in 23 of the 60 cases that have been filed under section 201 since its enactment in 1974. Not only have I witnessed a long parade of industries seeking help in dealing with foreign competition, but I have worked first-hand on the issues that are at the center of the congressional debate.

Section 201

Let me review very briefly the steps involved in a section 201 case. The first step is to determine whether or not the petitioning industry is injured. Once the domestic industry is defined, three criteria must be met in the injury phase of an investigation. First, imports must be increasing; second, the industry must be experiencing serious injury; third, increased imports must be a substantial cause of the serious injury. A substantial cause is defined as one that is no less than any other cause.

If those conditions are met and the Commission finds in the affirmative, the remedy phase of the investigation begins. Basically, the Commission has a choice of import relief, in the form of quotas or tariffs, or trade adjustment assistance. After the Commission makes it recommendation, the President has 60 days to accept, reject, or modify the ITC's recommendation based on considerations of the "national economic interest."

Note that there are no allegations of unfair trade practices. Section 201 is strictly a "fair trade" statute. For that reason there are several differences between section 201 and the principal vehicles for addressing unfairly traded imports, namely the antidumping and countervailing duty laws. The injury and causation standards are more difficult to meet under section 201, and relief is at the discretion of the President. These differences reflect an important distinction in the manner in which fair and unfair trade complaints are handled under current law, and one that should be remembered when evaluating proposals for change.

Most of the changes that I will be addressing can be found in S.1860, the bipartisan Senate bill introduced by Senators Danforth and Moynihan; H.R. 4750, the House Ways and Means Committee's bill, and H.R.3777, the House Energy and Commerce Committee bill. Although there are many other proposals to amend the trade laws these three bill have received the most attention.

Most proposals to modify section 201 attempt to address one of two objectives. First, many are intended to make import relief under section 201 easier for domestic industry to obtain. Second, many seek to improve the effectiveness of import relief in helping industries adjust to international competition. Let me elaborate on these two points.

Making Import Relief Easier to Obtain

Is import relief too difficult for domestic industries to obtain under section 201? Undoubtedly, this perception is based largely on the outcome of the nonrubber footwear case. The overall record of domestic industry is better than this experience would indicate. Of the 59 cases under section 201, 14 resulted in some form of import relief, and an additional six resulted in adjustment assistance for the petitioning industry.

Of course, there can be no "right" or "wrong" figure, no *a priori* expectation on the success rate for petitioners under section 201. But these figures may give a better indication of the utility of section 201 for U.S. businesses overall.

Two types of changes have been advanced to make section 201 more accessible for domestic industries. First, the standard used by the ITC would be lowered to improve the chances of an industry's securing a remedy recommendation from the Commission. Second, the President's discretion to accept, reject, or modify the ITC's remedy recommendation would be limited or removed.

Changes in the Injury Standard

Although the injury test is higher under section 201 than in other trade remedy statutes, I don't believe that it has been a significant barrier to many industries. Of the 59 completed section 201 cases, the Commission has found that the petitioner met the injury test 33 times, or in 56% of the cases. This success rate for domestic industries probably does not deter many filings.

Nonetheless, some proposals would make this standard easier to meet. For example, H.R. 3777 would drop "significant" from the standard, so that imports would only have to be a cause of serious injury. While this has been proposed in part to deal with the problem of recessions as a cause of injury, it has ramifications beyond this issue. In effect, relief would be given to an industry, with the consequent effects on consumers and downstream industries, even as more serious problems for the industry go unattended. The extraordinary relief provided under section 201 should be reserved only for those industries for whom imports are the most serious cause of injury.

Presidential Discretion

A common element in almost all comprehensive trade law reform bills is a change in the discretion the President now has to reject or modify the ITC's remedy recommendation. In its extreme form, such proposals would require the President to take the Commission's remedy. Another option would take this discretion away from the President and delegate it to the U.S Trade Representative. Other alternatives would link the discretion to the acceptance by the petitioning industry of an adjustment plan. For example, S. 1860 would allow the President to modify significantly or reject an ITC remedy accompanied by an adjustment plan only with approval of the Congress.

These proposals have gained support largely because of the President's rejection of the ITC recommendation of global quotas in the nonrubber footwear case in 1985. For many, it was unthinkable that relief could be denied an industry facing import penetration rates as high as 77 percent.

A review of a few statistics indicates that the record is a little better than the footwear example might indicate. Recall that there have been 33 affirmative findings by the Commission. In three cases, the remedy recommendation was for adjustment assistance only. Thus, the ITC has recommended import relief in the remaining 30 cases. The president has provided relief in 13 of these cases. The more recent record is even more promising for domestic industries. Going back to

1979, relief has been granted in eight of the last 11 cases in which the Commission has recommended import relief.

Even if the frequency of relief is better than one might expect, the current law is still subject to criticism. Some contend that it is not the frequency of relief that is the problem, but that relief has been given for political purposes, leaving less politically powerful industries without an effective remedy. Others will argue that when relief has been given it has been inadequate to serve the purpose of giving the industry a breathing space. Finally, others will contend that the statute, by requiring the President to make a highly visible decision to take action against imports, unnecessarily raises the stakes involved in the decision and involves many foreign policy and diplomatic pressures. All of these arguments are used to justify limiting the President's role in section 201 cases.

These changes may be due to a misunderstanding of current law. Some believe the purpose of the law is not being served if an ITC recommendation for relief is rejected by the President. But in fact the ITC does not actually "recommend" that the President impose import restrictions. Our role is limited to determining whether or not the petitioning industry meets the statute's injury standard and then, if it does, crafting a measure that would remedy that injury. We do not consider such factors as the cost of import restrictions to consumers or other domestic industries, the possibilities of retaliation, or foreign policy consequences. To eliminate the

President's discretion implies that such concerns should not count in import relief decisions.

Such arguments should be rejected. Current policy restricts automatic relief to those situations in which unfair trade practices, based on definitions included in international agreements, are found. Section 201 cases are often broad in scope, affecting large amounts of trade and covering imports from many countries. Naturally, such cases can raise sensitive policy questions that should be resolved in the executive branch.

These same concerns apply to proposals that limit the President's discretion only when industry adjustment plans are approved by the ITC. As I will discuss shortly, a more explicit approach to adjustment is useful, but this concept should not be linked to Presidential discretion under section 201. Even the most successful adjustment plan could still be costly for the economy and could invite retaliation.

The proposals to shift the decision-making responsibility to the USTR are much less drastic. They retain the flexibility necessary to assess the economy-wide impacts of import relief. Also, in some of the cases involving smaller import volumes from relatively few countries, such a change may "depoliticize" the import relief decision somewhat. But no one should expect significantly different results from such an arrangement. After all, the USTR works in the Executive Office of the President, and he/she is unlikely to take any action with which the President would disagree. My reservation about these proposals is based on the ability of the USTR to evaluate the non-trade factors involved in import relief decisions.

Improving the Effectiveness of Import Relief

A separate set of issues relates to improving section 201 relief so that it better serves the purpose of facilitating adjustment. Many criticisms are leveled against import relief. There are few examples of industries that have constructively used import relief to become more competitive. Rather than using import relief to complement business strategies to become more competitive, industries have used protection as a substitute for meaningful strategies. The large number of industries that have filed for relief more than once supports this argument. A related argument is that import relief alone is insufficient to address all of the problems confronting declining industries, and that additional remedies are necessary.

Among the proposals designed to improve the effectiveness of import relief are the incorporation of adjustment plans as part of the remedy recommendation, the expansion of remedies available to the President, and the auctioning of quota rights.

Adjustment Plans

There are several variations on proposals to incorporate adjustment features into section 201. Most proposals involve the creation of councils, which would include representatives of management, labor, government, and affected communities, that would agree on a set of measures designed to aid the adjustment of the firms, workers, and communities. In most cases, the ITC would have to approve these plans when it voted on a remedy.

Some would make adjustment plans mandatory, and would condition import relief on the acceptance of an adjustment plan. Other proposals would make this an option under section 201, offering to limit Presidential discretion whenever import relief is accompanied by an adjustment plan.

I would like to make several general comments on these proposals. First, the debate on adjustment plans is a very constructive development in import relief policy. It should not become bogged down in trite arguments over industrial policy and government planning. The question is not over government intervention--the decision to impose import relief has already determined that issue. The real issue is whether import relief could more effectively serve the goal of industrial adjustment if it were conditioned on certain steps taken by the industry.

Second, whatever adjustment mechanism is adopted, it should probably not be an option to be elected by the petitioning industry. Both S. 1860, as well as an earlier version of the Ways and Means bill, would create this option, and would entice industries to take that route by removing the President's discretion if the adjustment plan is approved by the ITC. This may be too high a price to pay to encourage adjustment under section 201. It would create incentives for electing this second option that have nothing to do with the need for explicit adjustment strategies. For example, this option might be chosen by those industries seeking relief that would be very costly or would provoke retaliation by our trading partners. Adjustment is an objective of section 201 as written in the 1974 Act, and should be retained and enhanced whenever import relief is granted.

Third, while the concept is appealing, the councils or boards created by these bills as forums to negotiate industry adjustment plans represent an untried approach. How easy will it be for these boards to reach an agreement in a relatively short time frame? Some of the most divisive labor-management disputes in recent years have involved disputes over concessions. With concessions from management and government also involved, the new boards could be even more troublesome. Also, not all firms, unions, or communities can be represented on these boards. Can the representatives for these groups effectively deliver on promises made on behalf of those not represented on the board? Also, to the extent the boards represent current participants in the industry, its recommendations might be biased toward maintaining the status quo (through such measures as reinvestment of profits) when a gradual exit from the industry might be the more appropriate strategy.

Fourth, careful attention should be given to the role for the ITC in this process. For example, some proposals would have the Commission vote to approve or disapprove adjustment plans, with Presidential discretion limited when an import relief recommendation is accompanied by an adjustment plan. I would be uncomfortable with such a new role for the ITC. Very significant policy consequences would ride the the ITC's vote. Such pressures might test the independence and objectivity of the Commission. On the other hand, the Commission can contribute by conducting more analysis of adjustment measures and by monitoring the industry after relief has been given.

There is a way to incorporate adjustment more explicitly in section 201 that would involve a more incremental change in the law. This is similar to the process outlined in Senator Roth's bill, S. 2099. This process builds on current law. First, the petitioner would be required to include additional information in the petition. An analysis of additional causes of injury would be required, along with a more detailed strategy for adjusting to import competition. This would involve a more realistic discussion of measures to be taken to improve competitiveness, along with an explanation of why these measures could not be undertaken without import relief. Petitioners should also be forced to consider to what extent capacity and employment levels would have to be reduced to adjust to imports, and what use the industry might make of trade adjustment assistance. Together, these changes would force petitioners to be more realistic in their appropriate strategy to compete with imports.

Next, the Commission would be required to conduct a more extensive causation analysis, rather than just determining whether or not increased imports were a substantial cause of serious injury. This kind of analysis would help focus on areas that could subject to conditions if import relief is granted. The Commission would also be required to evaluate an industry's adjustment plan in its report to the President if it finds that the petitioner meets the injury test.

Finally, the President (or the USTR) would take the analysis provided by the Commission and, after consultation with the affected parties, construct conditions for providing import relief. Perhaps at this stage the industry councils could be used in an advisory capacity. Finally, the Commission should conduct annual reviews of the adjustment measures undertaken by the protected industries. Many of these features can be found in H.R. 4750.

Improving Remedies Under Section 201

There is a growing awareness of the inadequacy of import relief as the answer to the multi-faceted problems of declining industries. One additional remedy that has attracted much Congressional support is antitrust relief. This is included in S 1860 and in S. 2161, the administration's antitrust proposal.

In general, this could significantly improve section 201. Antitrust relief may offer companies an opportunity to improve competitiveness through cost-reducing mergers, acquisitions, and joint ventures. However, antitrust relief need not be merely an alternative to import relief. Rather antitrust relief could be combined with import relief to help industries faced with overcapacity to adjust to stiff import competition. The Japanese, who have had much more success in shifting out of declining industries than we have, have used recession cartels based on this concept.

A second proposal would also change the President's remedy options by giving the President the authority to negotiate production agreements with supplying countries. S.1860 contains this proposal. This proposal results from the section 201 case on copper. In that case, the Commission reached a unanimous injury determination, but the remedies available under the statute were not appropriate for copper, a product that trades in world commodity markets. A quota or a tariff on copper would have created a two-tiered price system, with the U.S. price set higher than the world price. This would have hurt U.S. copper fabricators, whose raw material costs would have risen, and ultimately the U.S. copper industry. A cutback in production by the supplying countries would not have created this two-tiered system and it would have given U.S. copper producers relief through higher prices. But this was not a remedy the Commission could propose. The President ultimately rejected any import relief for the industry.

While this proposal might have been appropriate in the copper case, I believe that it could be abused in other situations. Production agreements in other industries could cartelize markets and frustrate, rather than promote, adjustment. Perhaps this option should be left as a last resort, to be used only if other forms of import relief are inadequate.

Finally, I would like to comment on a change proposed in S.1860, which would require the Commission to recommend import relief in all cases in which the injury test is met. More specifically, the amendment would deny the Commission the option to recommend adjustment assistance only. This change would be a serious mistake. One must keep in mind that the statute's purpose is to facilitate adjustment, and there is no guarantee that import restrictions will do that in every case.

In two recent cases, canned tuna in 1984 and wood shakes and shingles this year, I found it necessary to recommend adjustment assistance only. The best example can be found in the wood shakes and shingles case, in which the characteristics of that market inhibit the effectiveness of the duty sought by the industry, recommended by the Commission majority, and granted by the President. In that case, I found that the U.S. producers would not be able to retain the benefits of higher prices and, because the product is price-sensitive, demand would fall off significantly. Eliminating the adjustment assistance option for the Commission would shift the statute away from its adjustment function and make it more of a short-term protectionist device.

Auctioning Quota Rights

The Commission's remedy recommendation in the 1985 section 201 case on footwear has triggered a major debate on auctioning quota rights. Largely because the appreciation of the dollar negated the benefits of higher tariffs, many domestic industries prefer quotas as a means of import relief. But with their increased use, we have also become more aware of the drawbacks of quotas. Auctioning quota rights is one way of correcting some of these deficiencies.

First, auctioned quotas would minimize the cost of relief to the economy by transferring the quota rents from the foreign producers to the U.S. Treasury. In many instances foreign suppliers have become unintended beneficiaries of quotas as they reap additional profits that result from the higher prices induced by quotas. By auctioning the quota rights, we would more effectively target the benefits of import relief to the domestic industry while raising funds that could be used to pay for the administration of the quota or even to finance adjustment plans for protected domestic industries.

Second, auctioned quotas are more transparent than traditional quotas. The complexity of quantitative restraints can hide their costs to both government officials and consumers, which in turn can encourage their perpetuation.

Auctioning is also a more predictable and flexible system of administering quota programs. Under a quota system which lacks a predictable allocation method, importers never know how much they can ship without exceeding the quota ceiling. They may ship too much and have shipments blocked by Customs and trapped in bonded warehouses. Under an auction quota system, rights are more efficiently and flexibly allocated to more competitive firms who most want the rights.

Thus, I strongly support those proposals that would encourage the use of auctioning under section 201. I recognize, however, that as with any policy innovation, we are dealing with an untried concept. Some experimentation or phase-in may be appropriate to determine the best way of administering an auction system.

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Senate

By Mr. ROTH (for himself, Mr. WALLOP, and Mr. DURENBERGER):

S. 2099. A bill to amend section 201 of the Trade Act of 1974; to the Committee on Finance.

SECTION 201 LEGISLATION

● Mr. ROTH. Mr. President, I rise to introduce a bill on behalf of myself and my colleagues Senators WALLOP and DURENBERGER to amend section 201 of the Trade Act of 1974.

I offer this legislation because I am increasingly concerned that the trade debate on Capitol Hill has entered a new, and more dangerous phase. I refer to the growing tendency to blur the distinction between our attitudes and policies on fair and unfair trade. More and more, we see not only a tough and aggreesive posture by the Congress on unfair trade, but also a tough and aggressive stance on fair trade as well.

Make no mistake, I have no quarrel with a tough stand on unfair trade. But as far as I am concerned, toughness on fair trade is synonymous with protectionism and protectionism is the surest way to sacrifice our future economic prosperity.

This tendency to blur fair and unfair trade is now evident in the debate on reform of U.S. trade laws.

Some in the Senate are pressing the view that it is not enough to tighten up the trade statutes that deal with unfair trade—those that provide for remedies for dumping and subsidization, action against imports which infringe U.S. intellectual property rights and section 301 of the Trade Act of 1974, which covers other foreign practices that restrict or burden U.S. commerce. Now there is as well a serious effort to rewrite section 201 of the Trade Act of 1974, the section of the law that establishes general procedures for new import restrictions where no demonstration of unfair trade is required.

Section 201—our general import relief statute—is intended to provide industries facing tough import competition a temporary period of import relief, so that they can take action to adjust to this competition. Let me make clear at the outset that in this section 201 debate we are not talking about situations in which imports threaten our national security. That issue is addressed in section 232 of the Trade Expansion Act of 1962 and I agree with many of my colleagues that that statute needs tightening.

I do not believe the time is right for extensive changes in our laws on fairly traded imports, where national security is not the issue. In today's charged trade environment, we are likely to do more harm than good.

Nonetheless, since some in the Congress are pushing the fair trade debate this year, and since I believe their proposals amount to a dangerous gettough approach to fair trade, today I am introducing an alternative, comprehensive proposal for section 201 reform.

My legislation involves an alternative approach to each of the three central issues of section 201 reform:

Issue 1—Should the President have the discretion to deny relief to an industry seriously injured by imports?

Issue 2—How can the statute more effectively encourage protected domestic industries to use the period of protection to adjust to import competition?

Issue 3—Should there be an outside limit to the duration of import protection provided to any industry?

PRESIDENTIAL DISCRETION

A key feature of proposals by detractors of section 201 is to tie the President's hands on 201 relief decisions. When the President receives an affirmative recommendation for import relief from the International Trade Commission [ITC], he would be required to put it or something substantially equivalent to it in place. This would be the basic procedure—and only if the Congress passes a bill would the President be able to reject or modify the ITC's remedy recommendation.

Under this scheme, the national interest would be the exception, the special interest the rule. This is because the ITC's remedy recommendation is based on a narrow finding of the ecomomic facts of the case—injury to the domestic industry and the link between that injury and imports. This scheme would eliminate any weighing of this narrow finding against our broader national economic interests without special legislation from the Congress.

But I believe the national interest must not be relegated to a back seat where fair trade is concerned. Therefore, the legislation I am introducing today does not tamper with the current statutory framework on Presidential discretion. Instead, I am proposing that we reform section 201 to put the President under more discipline and to encourage use of the statute, while maintaining the President's discretion.

It is legitimate, in fact essential, that on a regular basis all aspects of the national economic interest be taken into account before import protection is provided to a particular domestic industry requesting general import relief. That is why the statute now, in section 202C, specifically directs the President to examine the full scope of domestic interests before deciding whether to provide import relief.

Here I would emphasize that the full scope of domestic interests is just that—not only does the President examine interests that could argue against relief, such as consumer effects, requirements for compensation, and our international economic interests, he assesses as well interests that could argue for relief, such as the geographic concentration of imported products, the extent to which the U.S. market is a focal point for exports of the product, and the economic and social costs to workers and communities if relief is not provided.

Let me make clear that in a section 201 decision there is never a clean win. There are always American winners and American losers. What do I mean by this. Under section 201 when the President provides import protection to a petitioning industry, our international trade obligations require him to provide compensation to our trading partners for these restrictions. In other words, when he raises tariffs or imposes quotas for the petitioning industry, he must also lower U.S. tariffs on an equivalent amount of trade in product areas of interest to the countries whose trade will be affected by the new U.S. import restrictions. This means that while the petitioning industry benefits from the import restrictions under section 201, other American industries—usually our more competitive sectors, like agriculture and high technology—will face greater import pressure as a result.

The tradeoff between the interests of various U.S. industries can become even greater if, in addition to compensation, retaliation becomes an issue. Retaliation, the imposition of new import restrictions on U.S. exports by other countries, could become an issue if the countries affected by the new U.S. trade restrictions are not satisfied with the President's offer of compensation. Again, retaliation would cost American jobs, jobs of workers producing goods, services or agricultural products for export in industries that are not even the subject of the section 201 case.

Thus, in the end, under the statute as currently drafted, the President makes a judgment as to whether the economic interests of the country as a whole outweigh the special case presented for relief by the petitioning industry.

Still, some would argue that the President can be mistaken in his judgment of the national economic interest. That may be * * * and it is important to remember that the statute already sets limits to the President's discretion. The Congress can pass a joint resolution putting the ITC remedy in place, thus overturning the President's judgment of the national interest. Or the Congress could become involved with alternative legislation to help the petitioning industry. Section 201 set up the general procedures for decisions on import relief; the Congress can act, and does act, when there are special circumstances.

Some say that because the President has the option to reject relief, the present statute too often puts the Congress into the thicket of individual trade decisions, and almost everyone agrees that Congress is not the best place to make individual trade decisions on a regular basis. It is true that so long as the import relief system provides the Executive discretion, industries that are not satisfied with the President's decision, particularly those with political clout, will seek congressional action.

But proposals before the Congress do not satisfactorily resolve this problem. If you take Presidential discretion away, you will establish a system that will simply give in to all special interests automatically by guaranteeing protection or, again, throw controversial trade cases into the Congress' lap should the President want to reject or modify relief.

Rather than taking Presidential discretion away, the best way to avoid undue congressional involvement in individual trade cases is for Members of Congress to respect the current system, which provides for a fair balancing of our national and special interests. But that gets to the crux of the problem. Members are now being urged to reject section 201 as a legitimate arbiter of trade cases. Why? Because some believe that the President's decision not to provide import protection to the footwear industry proves that the statute is obsolete, that no industry can use the established administrative process to get temporary protection from imports.

It amazes me that such a view could be offered given this administration's record in section 201 decisions. Of 11 section 201 cases brought since 1980, in 5 instances the International Trade Commission recommended that the President provide temporary protection; in 6 cases the Commission did not find the petitioning industries to be hurt by imports; in 3 of these 5 cases—motorcycles, specialty steel, and carbon steel—the majority, the President has provided significant import protection following the 201 investigation. Relief on motorcycles and specialty steel was given formally under the 201 statute; relief to carbon steel was given outside the framework of the statute.

For copper and footwear, the President did not provide relief. But as I have discussed, this is in keeping with the statute. The statute specifically provides that the President need not provide relief if it is not in the national economic interest. In the case of copper, the President found that many, many more jobs would have been lost in the fabricating industry than would have been saved in the mining industry if protection had been put in place. For footwear, the President found that consumers, particularly low-income consumers, would have had to pay a very high price to provide protection for an industry that has already received relief in the past and whose noncompetitive segments have little chance of ever becoming competitive.

Section 201 is not dead. In fact, five new cases—by the U.S. foundry, wood shakes and shingles, electric shavers, fork-lift truck arms, and apple juice industries—have been brought since the footwear decision. Another case, by the industry producing auto harnesses, is expected to be filed soon. Section 201 is alive and as far as the Presidential discretion issue is concerned, functioning exactly as it ought to.

QUID PRO QUO

As I see it, if we in the Congress are to focus on section 201 reform, we would do better to concentrate on the adjustment issue than the discretion issue.

The basic purpose of providing temporary import protection to a domestic industry is to provide the firms and the workers in that industry a breathing space—time to adjust, to take actions that will make them competitive when the protection ends. Yet, as currently written, section 201 does little to guarantee adjustment during the relief period. As a result, rather than functioning as an adjustment statute, section 201 becomes, instead, a simple protective device and when section 201 deteriorates into a simple protective device, this discourages the President from granting relief.

Recognizing this basic flaw in the current law, proposals have been introduced in the Congress intended to assure a quid pro quo from firms and workers when import protection is provided under this statute. The trouble with proposals now before the Congress, however, is that they look more like industrial policy for the losers than a simple quid pro quo.

Why do I say this?

I say this because the proposals now before us simply go too far. They involve an unnecessary degree of Government intervention in the economy and an unnecessary and costly increase in Government responsibility in trade cases.

Some proposals, for example, would provide for the establishment of tripartite—Government, labor and industry—committees for any industry which petitions for import protection under section 201. The purpose of the committees would be to develop an adjustment strategy for the industry concerned.

What's wrong with this? First of all, it means that Government resources would be tied up working with an industry for up to 8 months, even though the ITC had not yet even made a determination that the industry is experiencing injury due to imports. In addition to providing staff to participate in this possibly unwarranted exercise, the Government would take responsibility for arranging meeting rooms, calling meeting, and so forth.

Perhaps an even more serious problem is the fact that the executive branch would be put right smack in the middle of a section 201 case, before the ITC has ruled. This creates both the appearance of and potential for executive influence in ITC decisions. But we all have a stake in objective, independent economic analysis by the ITC. This helps us to limit portection—and the costs that it creates for the rest of our society—to economic situations in which it is objectively warranted. It also helps assure our trading partners that we are fairly carrying out our international trade obligations, a factor critical to keeping foreign markets open to U.S. exports.

It makes sense for Government to require a quid pro quo from firms and workers when relief is granted. After all, the purpose of relief is to facilitate, not delay adjustment. Besides, the Government is extending a special favor to an industry and it should get something in return. From industry and labor's point of view, the existence of a quid pro quo will encourage the President to grant relief.

But it doesn't make sense to tie up limited Government resources with every industry that petitions. Many of us see little merit in the broader concept of industrial policy—Government direction of our industrial structure that deals with both winners and losers. Legislating industrial policy for the losers only, through section 201, raises even more problems.

A basic objective of the legislation I am introducing today is to set forth a series of statutory changes that I believe can assure a quid pro quo in section 201 cases, while avoiding the pitfalls of "industrial policy for the losers." This legislation expands on ideas I introduced in January 1985 with Senators CHAFEE and SYMMS as part of S. 234, the Trade Expansion Act of 1985.

A good basis for building a quid pro quo into the statute exists in the current law. The law already directs the industry petitioning for relief to include a statement describing "the specific purposes for which import relief is sought, which may include such objectives as facilitating the orderly transfer of resources to alternative uses and other means of adjustment to new conditions of competition." The law also now provides for consideration, by the President, of the probable effectiveness of import relief as a means to promote adjustment. My legislation would elaborate on these two parts of the statute, elevating them in importance.

The key statutory changes I am proposing to assure a quid pro quo are as follows:

PETITIONER'S ADJUSTMENT PROPOSAL

The petitioner's statement of objectives would be referred to as the petitioner's adjustment proposal. In addition to the broader objectives already included in the statement, it would be expanded to include specific objectives to be achieved during the relief period, for example, levels of capital investment, capacity utilization, et cetera. The statement would also set interim goals to be reached at specified intervals during the relief period.

REMEDY HEARING

An ITC hearing on remedy would be explicitly required and it would cover not only the issue of import relief, but also an examination of the petitioner's adjustment proposal and consideration of the probable effectiveness of the proposed remedies in promoting adjustment.

ADDITIONAL COMMISSION DETERMINATION

In addition to its injury finding, the ITC would also make a determination of the probable effectiveness of import relief in promoting adjustment.

NEW ITC REPORT REQUIREMENTS

The ITC report to the President would be expanded to include an evaluation of the petitioner's adjustment proposal as a means of achieving international competitiveness.

NEW PRESIDENTIAL REPORT REQUIREMENTS

The President's report to the Congress, when he decides to grant import relief, would include a description of all actions which the firms and workers in the domestic industry concerned, and the Federal, State, and local governments are taking or have agreed to take during the period for which the remedy will be provided as a means of achieving adjustment to international competition. These actions would constitute the adjustment agreement. The adjustment agreement would, like the petitioner's adjustment proposal, include as well a description of the objectives of the relief and of the interim goals to be achieved at specified intervals during the relief period.

The adjustment agreement would not necessarily be identical to the petitioner's adjustment proposal. The President would have the flexibility to develop a satisfactory adjustment agreement, based on the ITC advice and his own assessment.

LEGISLATIVE REMEDIES

Any legislative proposals submitted to the Congress by the President to carry out the adjustment agreement would be considered on a legislative fast-track.

TERMINATION OF RELIEF

The President would establish procedures for monitoring the achievement of the goals in the adjustment agreement and for terminating or modifying relief in the event that firms or workers do not take actions agreed to.

In contrast to proposals now before the Congress, this scheme puts the burden on the petitioner, not the Government, until the point at which there is serious consideration of relief—after the ITC vote and injury—and it provides a more flexible means for working out a quid pro quo with the industry requesting relief. At the same time, it puts the President under more discipline—through the requirements for more detailed explanation of his decision—without taking away his discretion. Finally, it increases the likelihood that the President will grant import relief to petitioning industries by transforming section 201 into an effective adjustment statute.

DURATION OF RELIEF

Should we embark on a serious review of section 201, I believe the last issue—the duration of relief—merits particular attention.

The statute is intended to provide temporary import protection. Yet, it allows industries to receive relief for up to 5 years, with a possible extension of 3 additional years. Then, following this relief, after a 2 years' lapse of time, an industry can file again for relief.

Section 201 must not become a mechanism for permanent protection of inefficient industries. Suppose we establish a system for automatic protection under section 201 provided there is an affirmative ITC injury finding as some have suggested. If industries can reapply for more relief 2 years following the end of the initial import protection, inefficient industries are likely to qualify again for protection and the President will again be required to grant protection.

Our country has prospered for over 200 years with a dynamic economy and this is no time to establish a system to maintain industries that the market targets as losers.

Already this statute has a record of repeat filers. Of 58 section 201 investigations that have taken place, 13 involved industries that had been the subject of prior investigations. Proposals now before the Congress could increase this tendency. For example, some would allow for repeat filing without a 2-year lag, under some circumstances.

I think we should change the law in the other direction. It should be clear that relief is for a limited duration. This will put additional pressure on firms to adjust and it will limit the costs that the rest of society must bear when protection is provided to a particular industry. At the same time, I think such a change merits the support of labor and industry because it would encourage the President to grant relief in the first place.

The bill I am introducing today would set an outside limit to relief for any industry. This proposal is also tied to the other changes concerning the quid pro quo. Industries would continue to be able to receive relief for 5 years, with a possible extension of 3 years, and they would be able to petition again for relief 2 years after the initial relief period. But the only purpose for which import relief could be granted a second time would be to facilitate the orderly transfer of resources to alternative uses. The petitioner's adjustment proposal accompanying this second petition would specify goals and objectives to accomplish this transfer. The second relief period would have a maximum duration of 5 years, with no extension possible and relief during this second period would not be greater than that given during the initial period. No further relief would be granted under this statute. In other words, no industry would receive more than 13 years of import protection under section 201.

CONCLUSION

I have concentrated in these introductory remarks on three key issues in the section 201 debate. I would point out, however, that the legislation I am introducing includes some further changes, particularly concerning inclusion of targeting under threat of serious injury, consideration of consumer effects, and the expansion of the remedy options available to the President.

As I indicated at the outset of these remarks, I think the Congress would do better to concentrate its efforts on tightening our laws against unfair trade, rather than changing our basic policies on fair trade. But if we are to deal with fair trade this year, let's put the President under more discipline, rather than denying him discretion and let's make the kinds of statutory changes that by transforming section 201 into an effective adjustment statute will encourage him to grant relief.

I urge my colleagues to keep four points in mind as the section 201 debate proceeds: First, that the national economic interest is a legitimate consideration in fair trade cases; second, that section 201 already limits the President's discretion through the joint resolution process; third, that a quid pro quo is necessary in import relief cases, but need not involve heavy Government involvement and expense; and fourth, that section 201 should not be a mechanism for permanent protection of inefficient industries.

In the volatile trade debate which is likely to ensue this year, I urge my colleagues to draw a sharp distinction between fair and unfair trade. Let's move with particular care on section 201.●

Senator **Bentsen**. Mr. Chairman.

Senator **Danforth**. Senator Bentsen.

Senator **Bentsen**. I share a concern with Senator Evans in that particular provision that industry only has to show that they are substantially injured by imports, rather than having to show some unfair trade practices and trying to resolve that I think will not be an easy one.

I have some difference in the numbers I have been given concerning the use of the escape clause and will try to get a clarification of that. But I have been given numbers that show that less than half the cases filed during this administration through 1985, 5 out of 11 resulted in the granting of import relief. Maybe in the way that you have stated it, it may be.

I think you perhaps said that where the ITC has made such a recommendation. Was that the difference?

Senator **Evans**. Yes, I believe it was, Senator. But, in fact, that is reiterated in Miss Stern's testimony where she says, "Going back to 1979, relief has been granted in 8 of the last 11 cases in which the Commission has recommended import relief."

Senator **Bentsen**. I think that is probably the difference.

Senator **Evans**. Because I would suggest that if an industry files before the ITC, and the ITC turns them down, no one would suggest that relief be offered under those circumstances.

Senator **Bentsen**. I think that is probably the point in the difference in the numbers I was given than you gave. Thank you.

Senator **Danforth**. Senator Evans, thank you very much for your testimony.

Senator **Evans**. Thank you, Mr. Chairman.

Senator **Danforth**. Next, we have Ambassador Yeutter. It is always good to see you, Mr. Ambassador. Thank you very much.

STATEMENT OF HON. CLAYTON YEUTTER, U.S. TRADE REPRESENTATIVE, WASHINGTON, DC, ACCOMPANIED BY ALAN HOLMER, OFFICE OF GENERAL COUNSEL, WASHINGTON, DC, AND C. MICHAEL HATHAWAY, SENIOR DEPUTY, GENERAL COUNSEL, WASHINGTON, DC

Ambassador **Yeutter**. Thank you, Mr. Chairman. It is always good to be back.

Mr. Chairman, I would like to, first of all, say amen to everything that Senator Evans had to say. I appreciated and enjoyed his testimony very much, and I will try not to duplicate much of what he had to say.

Permit me, if I may, though, to embellish a few of those points very briefly and then we can turn to whatever questions the committee may have.

First of all, Senator Bentsen, just to clarify the numbers for the last 6 years, there have been 16 cases that have come before the U.S. International Trade Commission during this administration. In 10 of those, the U.S. ITC determined there was not a persuasive case presented to justify action. There were six others, of course, four of which had relief granted in one form or another. Those were specialty steel, as Senator Heinz talked about earlier; carbon steel, in which we now have a broad multilateral arrangement or, more accurately, a set of bilaterals; the motorcycle case, which has been a success story as Senator Heinz indicated, and the more recent shakes and shingles case. Then there were two in which no relief has been granted, those being the footwear and the copper case.

So like Senator Evans, Mr. Chairman, I too have difficulty comprehending statements that section 201 has not been working and must be fixed. Two turndowns in 5½ years at the Presidential level does not sound like evidence of ignoring the intent of the statute on the part of the President of the United States, but I will permit the record to speak for itself in this regard.

Then, Mr. Chairman, I would like to move beyond that and talk just a bit about the rationale of section 201 because it seems to me that there is an inclination to have the discussion move off tangentially and get far beyond what is really intended with this kind of legislation. And it all goes back, of course, to article 19 of the GATT, which is the basic safeguard provision under which legislation of this nature is passed here in the United States and in other countries around the world. It is called "escape clause legislation" or "escape clause provisions of the GATT" in one set of terminology. Other people call it "safeguard legislation" or the "safeguard provisions of the GATT."

Another way to ponder it would be in terms of it being a safety valve, if you will, for import pressures or the inundation that may take place by imports at a particular point in time.

And as Senator Evans and Senator Roth indicated in their colloquy, this is fair trade legislation; it is not unfair trade legislation. What we are talking about here today does not have a thing to do with unfair trade practices. It has never been intended to deal with unfair trade practices. I do not believe it is the intent of this committee to have it deal with unfair trade practices.

We are not talking about antidumping cases. We are not talking about countervailing duty cases. We are not talking about any other class of unfair trade practices.

What we are talking about here are cases in which a given industry is just being whipped in international competition, fair competition, and is asking for help from the U.S. Government to attempt to restructure itself so that it can become internationally competitive again. That is a much different situation from dealing with unfair trade.

The question then becomes: How big a loophole should we create to permit this deviation from the spirit of free and open trading practices internationally?

Putting it another way: How great a loophole should we create in the GATT and in our administration of the GATT for industries that have difficulty competing with their foreign counterparts?

And it was the United States who originally insisted that we have some kind of a safety valve in the GATT rules for this purpose, but we were a bit cautious in what the wording should be because obviously we have an interest in the safeguard laws of other nations. We are an exporting nation, not just an importing nation. We are the biggest exporting nation in the world, and we have to be a bit concerned about what other nations do in the way of safeguard laws that will keep our exports out.

In other words, if we create a loophole that is big enough to drive a truck through, it is not just trucks of other nations that are going to drive through that loophole coming into the United States, but the question is whether or not we are going to have loopholes going the other direction as well. Or putting it a different way, whether it will be very easy for other nations of the world to preclude our exports on the basis of escape clause or safeguard provisions.

In other words, the intent always has been to very carefully circumscribe safeguard laws so that we do not have a loophole that is big enough to drive a truck through and a loophole that will just demolish the entire free and open trading environment of the world and work to our disadvantage as the world's major trading nation.

So I think we ought to continue to keep this kind of provision very carefully circumscribed for that reason and others.

The other reason it seems to me that it ought to be carefully circumscribed is that there is no free lunch. Somebody pays in the implementation of safeguard legislation. And we ought to stop for just a minute and examine who it is that pays, because it is easy to determine who is going to benefit. It will be the industry that asks for relief. This is clearly special interest legislation. It is the classic case of special interest legislation.

This is not to suggest that we should never grant import relief here. There is nothing wrong with special interest legislation. Those particular industries may have very strong persuasive reasons for having relief granted in a particular case. I am not at all unsympathetic to that situation. There are a good many very solid, legitimate reasons why industries from time to time are inundated by import competition, lose their international competitiveness temporarily, but with a bit of breathing space can regain that international competitiveness and become viable once again. The motorcycle case is an example of that.

There are some other cases when granting relief may not be worth the cost.

Now why is it so appealing to come in and ask for changes in this legislation to make import relief more feasible and are more likely to occur? It is because those who pay the cost are often not in this special interest category and they are less likely to object. Who is going to pay?

Well the paying that takes place in this legislation occurs internationally and domestically, or both.

Internationally, as you know, Mr. Chairman, anybody who is adversely affected when we take safeguard actions is entitled to compensation under the GATT. So that means our exporters pay.

Now if it is more important to help the import industry than the damage that is going to occur to the export industry, fine, let's make that trade off. We will help the import group that is in danger of damage, or is being damaged, and we will put the burden on the backs of the exporters.

But it seems to me if we are going to ask our exporters to pay, Mr. Chairman, there ought to be a darned good reason for them to pay. What we are doing is choosing to have one segment of our economy pick up a burden for helping out another segment of our economy and that is a difficult trade off, Mr. Chairman. We should recognize the interest of the exporters as well as the interest of importers of an import-sensitive industry in this respect.

The other paying, of course, comes on the domestic side, and that means either consumers are going to pay, because obviously import restrictions are going to raise the price of the product that is involved, and all American consumers of that particular product will pay.

The other pay, if we grant adjustment assistance—we, the Government, grant adjustment assistance rather than import relief—is the taxpayer will pay.

So we are going to place the burden either on exporters, on the consumer, on the American taxpayer, or some combination of the three.

This is not to suggest we shouldn't do it, but it is to suggest that we ought to think very, very carefully about passing out that kind of burden. We ought to do it only if there are very persuasive reasons for placing those burdens on one or a combination of those three in order to help an import-sensitive industry that just cannot hack it anymore.

Now let me go on to say one other thing, Mr. Chairman, and that is one must also very carefully appraise why it is that this import-sensitive industry or this particular industry is in trouble. Why is it that that particular industry is no longer internationally competitive and cannot hack it in global competition?

Now sometimes the reasons have nothing whatsoever to do with imports. If one were to read the newspaper today one would almost assume that imports are the cause of all travail, economic travail in the United States. I would simply submit, Mr. Chairman, that there are sometimes reasons why plants close and people are out of work that are unrelated to imports. There are some other reasons. One of them is obsolescence, of course, and we cannot blame imports for obsolescence.

We do not manufacture buggy whips in the United States today, but that is not because of imports. That is because we do not need buggy whips any more.

So obsolescence has something to do with plants closing and people going out of work.

Management shortcomings are another element of this picture. It is not the fault of imports that people do not manage their plants properly or that an industry, as an industry, is not very well managed. We should not blame imports for that. We ought to hold management accountable for its own shortcomings in a given plant or a given industry.

A third one is modernization. Sometimes it is just darned good business to modernize and operate one's plants and one's industry more efficiently. And that may call for fewer employees rather than more employees. That has happened over and over again in this country. We substitute capital for labor when it makes sense to do so, and that is a logical business decision.

And it is regrettable that people sometimes lose jobs as a part of that process, but that is the way a free enterprise, capitalistic society works. If we can help people who lose jobs in that situation, fine. We ought to help them. But let's not blame imports if it is modernization that calls for that result.

The textile situation immediately comes to mind, Mr. Chairman.

We have a lot of rhetoric on Capitol Hill these days about the importance of granting relief to the American textile and apparel industry. And this Congress may be voting on that very issue in terms of an override of a Presidential veto here in 2 or 3 weeks from now.

It is interesting to me, however, that the American textile industry has never sought relief under section 201. That makes me wonder just whether imports—just how persuasive imports are as a cause for the economic travail that exists in that industry.

The fact is, the textile industry has done a darned good job of modernizing and people have lost their jobs. And it is very convenient to blame imports, but it may well be that imports are not the problem.

Now, Mr. Chairman, I am not going to take time to go into the specific aspects of S. 1860 or S. 1099. Suffice it to say there are some aspects of those two features of legislation that have some appeal to the administration, and I think it would have appeal to the Congress. And we would be prepared to support a number of those measures. My comments on those points are included in my prepared testimony which is available to you.

There are some other elements of that legislation, of course, that are very troublesome to us, some of which have been mentioned this morning: the limitations on Presidential discretion; the matter of legislating relief for copper and footwear; the matter of having some adjustment kinds of provisions, as Senator Heinz referred to earlier, as something approaching industrial management or industrial planning. There are clearly some elements of the adjustment planning process that are troublesome to us: the manner of granting both import relief and trade adjustment assistance; the confusion that I think exists in this legislation of bringing in some provisions that relate to antidumping and countervailing duties, and there are a number of others.

So we clearly have some very major reservations about the content of some of this legislation, but we are prepared to sit down and do what we think is reasonable and sensible in section 201 to make it the kind of provision that is intended by the Congress and the kind of provision that would be compatible with the spirit of a free and open trading system and the safeguard provisions of the GATT.

Mr. Chairman, at this point perhaps we should go to questions.

[The prepared written statement of Ambassador Yeutter follows:]

TESTIMONY ON TITLE III OF S. 1860 AND S. 2099

Ambassador Clayton Yeutter
United States Trade Representative

before the

United States Senate Committee on Finance

July 17, 1986

Mr. Chairman and members of the Subcommittee, I am pleased to appear before you today to discuss import relief and adjustment policy, and proposed legislation that would change Title II of the Trade Act of 1974. I would like to take this opportunity to talk about our views on the policy goals an import relief statute should serve, and to comment on proposals on this subject that are now before the Committee.

Some of these proposals would aid legitimate goals of import relief and adjustment. Some would not; and some would entail government interference in private sector decisionmaking in a way that would be unworkable in practice, and unacceptable to the American people.

Import Relief: The Reagan Administration Record

First, I would like to emphasize that our record since 1981 in administering section 201 is impeccable; this record demonstrates that major changes to section 201 are not needed. Over the last five years, the Reagan Administration has demonstrated that we will provide import relief under section 201 in appropriate cases.

Decisions on sixteen section 201 cases have been made since this Administration took office. In ten cases, the ITC found no injury. Of the remaining six cases where the Commission found injury and recommended import relief, the President granted such relief or alternative relief in four of the cases (specialty steel, carbon steel, heavyweight motorcycles, and cedar shakes and shingles).

Only in two of the sixteen cases -- copper and footwear -- did the President reject import relief. The President's decision in both cases was based strictly on his determination that relief would not be in the national economic interest. He is required to make such a determination by Section 202(c) of the Trade Act. In the copper case, the President determined that import relief would have caused job losses in downstream copper fabricating industries far greater than jobs saved in copper mining. In the footwear case, the cost of relief to consumers would have been extremely high, many jobs would have been lost in other industries, and the footwear industry failed to show that relief would have improved its international competitiveness in any significant way.

Import Relief -- Goals and Rationale

Before getting to the specifics of the proposals in S. 1860 and S. 2099, I would like to mention a few of the principles that guide our thinking on import relief, adjustment and section 201.

Section 201 is the key trade remedy in U.S. law that focuses solely on injury to a U.S. industry caused by the impact of all imports, fair or unfair. Section 201 has nothing to do with whether trade is unfair; it is an internationally allowable form of protectionism, albeit for a specific and limited purpose. Section 201 was designed to provide temporary relief from serious injury caused by imports, in order to give time and room for adjustment that would enable the injured industry to compete successfully without protection at the end of the relief period.

The need for safeguards mechanisms such as section 201 was recognized by the drafters of the GATT. At the insistence of our negotiators, Article XIX of the GATT, the "escape clause," was written to permit GATT member countries to raise duties or restrict imports even when they would otherwise be legally obligated not to do so because of prior tariff concessions. But the use of this authority is limited, and there is a price tag attached when it is used.

Legally, we can only invoke Article XIX when there is an objective finding, based on real evidence, that increased imports have caused serious injury or the threat of serious injury. The relief provided cannot exceed that which is necessary to prevent or remedy such injury, and it must be temporary in nature.

"Escape clause" relief is not free. When import relief impairs a tariff concession, we are legally obligated to compensate those countries whose trade is damaged. If we do not compensate them, they are legally entitled to retaliate against our exports. And as we have seen in the recent shakes and shingles case, other countries may choose to retaliate against us even if our import relief action does not impair a legally-bound tariff concession. Even though our action temporarily raising the tariff on shakes and shingles to 35 percent did not violate any tariff concession, Canada, the source of our imports of cedar shakes and shingles, chose to retaliate by raising its tariffs on books, periodicals, computer parts, and some other U.S. products whose tariffs are not bound in Canada.

Section 201 is at the center of our trade laws, and the necessity for its use is a symbol of the openness of our market. Escape clause relief is the price we all pay to maintain an open world trading system. But import relief is not free. It has a cost in trade compensation or retaliation. Ironically, that cost is often borne by our most competitive industries, i.e., our aggressive exporters. When import relief saves more jobs than it costs and gives an industry a fighting chance to adjust and survive, we pay the price willingly. But when the costs are too high and the benefits are fleeting, relief clearly is not in the national economic interest.

For this reason, the President's decision on whether and how to provide import relief under section 201 is one of the toughest economic policy decisions he has to make. Such a decision has far-reaching implications for our entire economy and for our foreign economic policy. The President has discretion to make this decision, on the basis of the statutory criteria in section 202, after carefully weighing all factors. It is a decision that he alone should make, and I strongly oppose transfer of this decisionmaking authority to the USTR or to any other government official.

Likewise, I oppose curtailment of the President's discretion. That would place an independent commission, the ITC, in the position of making decisions that have far-reaching foreign and domestic policy implications for the United States, without the benefit of review or modification by the executive branch of government. It would be an unprecedented, unwelcome and unwise change in the ITC's mission, and it would be terrible public policy.

In administering section 201, we have had various policy goals. Import relief should be oriented toward positive structural adjustment of the industry in question; to that end, it should be temporary and degressive. In carrying out Presidential review of section 201 cases, the Administration has already focused considerable attention on the existing criterion in Section 202(c)(3) that requires the President to consider the probable effectiveness of import relief as a means to promote industry adjustment, and efforts within the industry to adjust to import competition. Petitioners can provide data on adjustment plans in their petitions, and we have taken the initiative in requesting the ITC to collect projected adjustment data as a part of any 201 investigation. Furthermore, in 201 cases we have conducted detailed discussions with individual firms on their adjustment intentions and on their ability to become internationally competitive. Where import relief has been granted, in most cases we have requested periodic reports from the ITC on actual adjustment efforts.

A number of recent proposals on industry adjustment under Section 201, such as section 305 of S. 1860, have called for the establishment of a tripartite board with representatives from government, industry, and labor (and others) to draw up a consensus adjustment plan. They also call for an interagency import relief monitoring board. These proposals would transform the ITC from its traditional role as an independent commission into an industrial policy making agency. But such proposals are impractical, unworkable and involve a level of government economic intervention that the American business community and the American people will not tolerate.

While the government does have a responsibility to assess the effectiveness of private sector adjustment plans, there is no basis for believing that government bureaucrats are better-equipped to devise such plans than are business executives. Section 305 seems to reflect the old idea, categorically rejected in the 1980 and 1984 Presidential elections, that government can somehow solve all our problems. The marketplace simply does a much better job of allocating capital and human resources than do government bureaucrats. Even in the section 201 context, businesses should be free to make their own decisions.

The 1983 section 201 case on heavyweight motorcycles is a good example of how section 201 can work to promote adjustment, and why a heavy-handed industrial policy approach to import relief could impede adjustment. When the Harley-Davidson Motor Company petitioned for import relief under section 201, it also submitted a comprehensive adjustment plan. The adjustment plan focused on new product development, improved productivity, cost reduction, improvement of product quality and innovative marketing techniques. In the three years since the President's relief decision, Harley has carried out most -- but not all -- of its original plan. Harley has implemented statistical quality control and just-in-time inventory controls that have resulted in substantial increases in productivity and competitiveness. Increased cooperation between management and labor, and Harley and its suppliers, have cut manufacturing costs. USTR, advised by the Trade Policy Committee, is now reviewing whether to continue the import relief on heavyweight motorcycles, and I cannot prejudge the outcome of that review. But all sides agree that so far this case represents a successful use of section 201 for adjustment to international competition.

Government industrial planning and tripartite councils would not have helped in this case. An interagency group led by USTR has kept track of Harley's progress, and we have recognized that it is not always possible to comply to the letter with an adjustment plan made years before. But the achievements I have cited were Harley's, not ours. The relationship between management and labor has clearly been a crucial factor, but I do not believe that either management or labor would have wanted our interference. Nor would any other section 201 petitioner.

The industrial policy approach in section 305 would inevitably lead to unsound economic decisions. Government officials do not have the expertise either to make or second-guess business decisions. And the tripartite approach suggested in this legislative proposal would politicize and distort those decisions.

Individual firms should make their own adjustment plans. They should base their plans on their own projections of future market conditions, and their own willingness to commit resources to the task of becoming internationally competitive. They, not the government, should be held accountable in the marketplace and by their shareholders for their success or failure in bringing those plans to fruition.

Section 201 Proposals in S. 1860 and S. 2099

The Administration has spent considerable time over the past few years studying many proposals for change in section 201. I will summarize here our reactions to a few of these. Detailed section-by-section analyses of S. 2099 and Title III of S. 1860 are attached to this testimony.

--Emergency relief for perishable agricultural products: As the President stated in his trade policy address last September, we support timely, GATT-consistent import relief for such products. We have been studying the issue to determine how a provision can be crafted to make it both effective and GATT-consistent.

The problem with section 303 of S. 1860 (and the similar provision in section 121 of H.R. 4800, the House omnibus trade bill) is that it violates the GATT. Previous fast-track relief provisions applying to Israel FTA and CBI duty-free treatment of perishable products only removed a special trade preference and restored the usual tariff; section 303 would raise tariffs or impose quotas in violation of tariff bindings. We can do this legally, under article XIX of the GATT, only if there is an objective finding on the basis of real evidence that increased imports have caused serious injury (or threat thereof) to a U.S. industry. For instance, we could have a GATT-consistent fast-track safeguards mechanism based on advance monitoring by the ITC under section 332 and an ITC determination of serious injury caused by increased imports. But the approach in section 303 would give hasty relief to some industries even where the ITC later finds no injury; other industries will have to pay those compensation bills.

--Additional alternatives for import relief: The Administration's antitrust package proposes the use of antitrust relief as an alternative to import relief. In essence, this proposal would provide a limited antitrust exemption, allowing firms in industries injured by imports to regain competitive strength by merging with or acquiring other firms, so as to obtain efficiencies and economies of scale. Antitrust relief to an industry would preclude any other import relief under section 201 for ten years. We support the antitrust relief proposals in S. 1860 and S. 2099 to the extent that they are consistent with the Administration bill. But antitrust relief should be provided as an alternative to other import relief, not in addition to such relief; "double-dipping" of this type could have a substantial negative impact on both competition and consumer welfare. Furthermore, these proposals would give excessively broad immunity from legal attack for mergers and acquisitions under section 7 of the Clayton Act and section 1 and 2 of the Sherman Act. Unlike the Administration bill, this proposal could immunize even monopoly situations.

In closing, Mr. Chairman, I would like to reiterate a few key points.

First, let us not forget that Section 201 provides temporary relief for industries injured by fairly traded imports, not unfair trade practices. Nevertheless, it is an important cornerstone of U.S. trade law that should be used vigorously in appropriate cases. This Administration is committed to using Section 201 relief when it is in the national economic interest and in fact has done so in a majority of the cases brought before us.

Second, the Congress wisely gave the President the responsibility to determine what is in the national economic interest and it is impossible to make the case that such responsibility ought to rest with any other official. Nor would it be prudent to remove the national economic interest determination from the process; that, after all, is the provision which keeps us from damaging ourselves with Section 201.

Third, while all of us would like to see improvements in our ability to assist industries in structural adjustment, we should not be so naive as to think that the answer is to substitute bureaucratic judgement for the wisdom of the marketplace.

Finally, it is critically important as we consider any improvements in Section 201 that we avoid changes that would make our process GATT-illegal. We are seeking to provide leadership to the world in improving the safeguards process in the new round of GATT negotiations and we would totally undermine our credibility if we were to blatantly disregard existing GATT rules.

For the reasons above, Mr. Chairman, the Administration opposes Title III of S. 1860. Title III contains too many provisions that would violate our international obligations, would bring unwanted government interference in private sector decisionmaking, or are otherwise objectionable to us. While we consider the approach in S. 2099 to be much more constructive, we still oppose it in its present form.

Thank you again for the opportunity to testify today, Mr. Chairman. I would be happy to respond to any questions you may have.

Section-by-section Analysis of S. 2099

As introduced Feb. 25, 1986

Section 1 -- Investigations

Adjustment plans: Deletes the existing requirement that petitions under section 201 include a statement of the specific purposes for which relief is being sought; substitutes a requirement that all 201 petitions include an adjustment proposal including objectives, goals, timetable and actions to be taken to meet these objectives. No 201 investigation could be initiated until the ITC receives an adjustment proposal from any person eligible to file a 201 petition for the industry (any firm, trade association, union or group of workers which is representative of an industry that makes an article like or directly competitive with the imported article).

We do not object to the ITC reviewing adjustment plans, but plans should be submitted voluntarily either by individual firms or by industries. Petitioners can already provide data on adjustment plans in their petitions, and we have taken the lead in requesting ITC collection of data on this issue in their 201 investigations. As already mandated by law, we give extensive consideration to adjustment issues in our determinations on import relief and in our later followup in cases where relief has been granted.

Threat of serious injury: Elaborates on the existing factors to be examined concerning threat of serious injury, and adds: (1) targeting; (2) existence of preliminary or final affirmative antidumping or CVD determinations on goods produced by the U.S. industry; (3) lack of ability of firms in the industry to maintain existing levels of R&D; (4) the extent to which trade restraints abroad divert exports to the U.S.; (5) increase in capacity, or unused capacity, abroad likely to result in increased imports into the U.S.; (5) rapid increase in market penetration and the likelihood that it will increase to the level of serious injury; (6) probability of price-suppression or price-depression caused by imports; (7) potential for product-shifting; and (8) other demonstrable adverse trends that indicate probability that imports will cause serious injury. The first four new factors are in S. 1860; the last four track the threat factors added to the AD/CVD law in the Trade and Tariff Act of 1984.

We do not think these additional factors are necessary; some we oppose. To be GATT-consistent, threatened injury must be real and imminent -- our current standard. This standard is not impossible to meet; the import relief on heavyweight motorcycles, for instance, was based on an ITC finding of threat of serious injury. We oppose the inclusion of targeting here, and the

existence of antidumping or countervailing duty determinations is irrelevant in this context. The list of threat factors is and should remain a list of objective economic factors relevant to a determination whether injury is real and imminent to a particular industry.

The existence of antidumping and countervailing duty determinations suggests that the threat of serious injury is reduced, not increased, because the dumping or subsidization would be remedied by the application of offsetting antidumping or countervailing duties. Section 201 is not a remedy against unfair trade, but against all imports; section 201 investigations already fully examine the indicia of injury (price and other market effects) caused by all imports under investigation. Also, inability to maintain R&D levels is not necessarily injurious or related to imports; therefore, we object to inclusion of this factor as drafted.

ITC remedy recommendations: Makes it possible (but not mandatory) for the ITC to recommend TAA in addition to import relief. Newly requires the ITC to hold a hearing on its remedy recommendation and the adjustment proposal, to determine the probable effectiveness of import relief, to evaluate the effectiveness of the adjustment proposal, and to estimate the effects of relief on private and industrial consumers.

The thrust of these proposals is constructive. It is useful and important to focus explicitly on the benefit side of the import relief equation: will the relief, in the end, produce lasting benefit for the industry? And on the cost side, the ITC's expert economic advice on costs to private and industrial consumers would be a valuable input to the President's decision on relief. We stress that ITC efforts should complement, not substitute for, Administration review of these issues. The Administration opposes continuation of TAA to firms primarily on the grounds that the program has been ineffective and wasteful.

Section 2 -- Relief from Imports

Presidential action: Requires the President to evaluate the adjustment proposal. Also, the President's report to Congress on his action under section 203 must also describe: the probable effects the import relief will have on the industry's ability to adjust to imports; actions that industry, labor and governments are taking or have agreed to take to aid competitiveness (the "adjustment agreement"); and the probable effects of the relief on consumers.

We do not believe that the President should be required to review adjustment plans nor to report on actions to be taken by industry and labor to adjust to imports. It has to be clear that proposals by industry, labor or government to take specific

actions cannot be compelled, and that government cannot be put in the position of enforcing compliance with them. Moreover, industry actions are generally specific business decisions by individual firms, not a concerted industry effort.

Adds two additional options for import relief: (1) antitrust relief provisions identical to those in S. 1860; and (2) multilateral negotiations to address problems not susceptible to unilateral solution, such as diversion of imports due to targeting. If such negotiations fail to provide substantial relief by a year later, the President must proclaim import relief (subject to Congressional override) to some extent within 115 days after that.

Generally, we do not object to these proposals for expanding our tools for remedying import injury. However, we object to the antitrust relief provision as drafted. Antitrust relief should be provided as an alternative to other import relief, not in addition to such relief; "double-dipping" of this type could have a big negative impact on both competition and consumer welfare. Also, import relief should be prohibited for 10 years after the granting of antitrust relief, as in the Administration's antitrust package. Furthermore, this proposal would give excessively broad immunity from legal attack for mergers and acquisitions under section 7 of the Clayton Act and section 1 and 2 of the Sherman Act. Unlike the Administration bill, this proposal could immunize even monopoly situations.

The drawback to the new relief option providing for multilateral negotiations is the lack of flexibility in the event that negotiations fail to produce substantial relief in one year. It would be better if it were made parallel to existing provisions in section 203 on orderly marketing agreements [illegible] we need to ensure that any multilateral agreement is temporary and does not result in the cartelization of international trade.

Requires an ITC evaluation of relief after it terminates, similarly to section 304 of S. 1860.

This provision is a constructive, although unnecessary, addition to existing law. It would also provide information useful for evaluating the effectiveness of escape clause relief generally.

Followup on adjustment agreements: Requires the President to establish procedures for monitoring achievement of the goals of the adjustment agreement; permits termination or modification of the relief if the actions agreed to are not taken; authorizes submission of fast-track legislation necessary or appropriate to achieve goals of the adjustment agreement.

We believe that it is inappropriate for the President to establish rigid procedures for monitoring adjustment plans. We already, as appropriate, monitor implementation of import relief and adjustment plans (for instance, in the motorcycle case). The President already has the authority to terminate relief if appropriate. Although we do not object to authority for fast--track legislation, we question the appropriateness of exempting firms within an industry from general regulations or laws that are in the public interest, solely because those firms face import competition.

201 sunset: Bars any new 201 investigation in an industry that has been granted import relief under section 201 during two non-consecutive periods. For any industry that has been granted section 201 relief in a previous non-consecutive period, the sole objective of any new 201 relief is to be orderly transfer of resources out of the industry (and the adjustment proposal must specify how); import relief cannot exceed the relief provided the last time; and no extension of relief will be allowed.

We feel this is a constructive proposal. We object, however, to requiring one industry-wide plan to adjust out. Some firms within an industry may be competitive, while others will adjust out of the industry.

Section-by Section Analysis: Title III, S. 1860

Text as introduced Nov. 20, 1986

Section 301 -- Investigations under Section 201 of Trade Act of 1974

Amendments regarding ITC investigations under section 201.

1. Focus on adjustment: Amends section 201(a) to provide that purposes of import relief may include facilitating the orderly transfer of resources to alternative uses enhancing competitiveness. Requires the ITC to investigate factors other than imports that may be a cause of injury or threat, and to include such findings in its report to the President. Requires the ITC's recommendation on relief to determine whether adjustment assistance can effectively assist in remedying (rather than remedy) the serious injury or threat found by the ITC; in effect, requires the ITC to recommend import restraints whenever it finds serious injury or threat thereof.

We support use of section 201 to facilitate adjustment. However, we oppose the provisions in this bill that would foreclose the ITC's ability to recommend TAA as an alternative to duty increases or import restrictions. In some cases there may be no remedy superior to TAA. The Administration opposes continuation of TAA for firms, because we have found it to be ineffective and wasteful. We also have reservations about expanding the ITC's jurisdiction to investigate non-trade factors that may be a cause of injury.

2. Focus on domestic production: Requires the ITC to disregard domestic producers' captive imports when determining the domestic industry producing like or directly competitive articles. Focuses ITC injury examination not on the overall profitability (including offshore operations) of firms in the U.S. industry, but on firms' ability to operate domestic production facilities at a reasonable level of profit. Provides that captive imports by firms in the industry may not be considered as a factor indicating absence of serious injury or threat.

We object to these provisions, which detract from the ITC's ability to apply the 201 statute flexibly in accordance with business reality. The ITC can already disregard captive imports, in appropriate cases; this would force the ITC to do so even when it is not appropriate.

3. Threat of serious injury: Elaborates on the existing factors to be examined concerning threat of serious injury, and

adds: decline in market share; targeting actions that cause or threaten serious injury; existence of preliminary or final affirmative antidumping or CVD determinations on goods produced by the industry; lack of ability of firms in the industry to maintain existing levels of R&D; the extent to which trade restraints abroad divert exports to the U.S. This provision is substantially the same as elements of section 301 of S. 1356.

We do not think these additional factors are necessary; some we oppose. To be GATT-consistent, threatened injury must be real and imminent -- our current standard. This standard is not impossible to meet. The import relief on heavyweight motorcycles, for instance, was based on an ITC finding of threat of serious injury. The list of threat factors is and should remain a list of objective economic factors relevant to a determination whether injury is real and imminent to a particular industry.

Section 201 (and GATT Article XIX) focuses solely on increased imports (whether fair or unfair) and any injury or threat caused thereby. It is irrelevant and inappropriate to introduce decision criteria based on whether imports are fair or not -- such as targeting or the presence of dumping or subsidies.

The existence of antidumping and countervailing duty determinations suggests that the threat of serious injury is reduced, not increased, because the dumping or subsidization would be remedied by the application of offsetting antidumping or countervailing duties. Also, inability to maintain R&D levels is not necessarily injurious or related to imports; therefore, we object to inclusion of this factor as drafted.

4. Consumer impact: requires the ITC's recommendation on relief to include an estimate of the short-term and long-term effects of the recommended relief on private and industrial consumers (including effects on price and availability of imports and domestic products).

The Administration does not object to an ITC report on the consumer impact of the recommended relief. However, ITC estimates of consumer impact of relief should not preclude further study of this issue in preparation for the President's decision on import relief.

Section 302 -- Provisional Relief Upon Finding of Critical Circumstances

Authorizes provisional import relief (any action authorized under section 203(a) including tariffs or quotas) before a determination of serious injury by the ITC, if the President finds that "critical circumstances" exist. "Critical circumstances" exist if a significant increase in imports (actual or relative to domestic production) over a short period of time has led to circumstances in which a delay in the imposition of relief would cause damage to the domestic industry that would be difficult to remedy at the time relief could be provided under section 203.

The Administration opposes this proposal, which would clearly violate the GATT. The GATT requires that there be an objective determination of *serious* injury caused by *increased* imports, *before* any action is taken against imports. In our view the way to meet that standard is a determination of serious injury by the USITC. If we take provisional action, and the ITC later finds no injury, we will still owe compensation.

Section 303 -- Accelerated Procedures for Perishable Products

Provides fast-track relief where a section 201 petition is filed on a perishable product, if the petition requests such relief and is also filed with USDA. The Secretary of Agriculture determines within 14 days whether such relief is warranted, and the President than has 7 days to decide whether such action is in the national economic interest. "Perishable products" are not defined. Emergency relief can include tariffs, quotas, or tariff quotas; it lapses when regular import relief is proclaimed, when the ITC makes a negative injury determination or the President decides not to give relief, or when the President decides relief is no longer warranted due to changed circumstances.

The Administration has stated its support for expeditious relief for perishable products. However, this proposal would clearly violate the GATT. The ITC is internationally recognized as our objective fact-finder on injury questions. Previous legislation on fast-track safeguards has only dealt with withdrawal of special duty-free treatment and restoration of the regular tariff. However, the mechanism here could lead to raising tariffs above GATT-bound levels. We can do this legally, under article XIX of the GATT, only after an objective finding on the basis of real evidence that increased imports have caused serious injury (or threat thereof) to U.S. industry. For instance, we could have a GATT-consistent fast-track safeguards mechanism based on advance monitoring by the ITC under section 332 and an ITC determination of serious injury caused by increased imports. But the approach in section 303 is not acceptable. It will give hasty relief to some industries even where the ITC later finds no injury; other industries will have to pay those compensation bills.

Section 304 -- Evaluation of Import Relief

Requires the ITC to evaluate the effectiveness of escape clause relief after it has terminated. ITC must hold a hearing and report to the President and the Congress.

This provision is a constructive, although unnecessary, addition to existing law. It would also provide information useful for evaluating the effectiveness of escape clause relief generally.

Section 305 -- Industry Adjustment and Competitiveness Strategy

Provides for optional tripartite plan development groups to prepare an industry assessment and competitiveness strategy, if requested by the petitioner in a 201 case. This strategy must:

-- set out objectives and specific steps to improve competitiveness and lead to an industry that can be competitive after import relief expires;
-- include a desirable adjustment strategy for the producers in the industry;
-- set out actions Federal agencies can already take, or recommend new legislation, to help meet objectives of the strategy; and
-- describe all actions that management, labor and government are taking or have agreed to take to fight injury-causing factors other than imports and to aid adjustment.

The assessment and strategy must be submitted to the petitioner by 120 days after the start of the 201 case, together with the group members' opinion of the viability of the strategy. Support services for the plan development group are provided by USTR, Labor and Commerce.

If the ITC finds serious injury, the petitioner may submit the assessment and strategy to the ITC the day after the injury finding. The USTR then submits the opinions of Federal agencies on the viability of the strategy, as the USTR deems appropriate. The ITC then must seek commitments from the firms in the industry on how they plan to act on the strategy's recommendations, and otherwise on planned actions to adjust. The ITC transmits these commitments on a confidential basis to Federal agencies. (In the Presidential phase of the 201 investigation, the President must evaluate the strategy and the commitments, which must both be taken into account in deciding on import relief.)

The ITC's remedy recommendation must take into account the contents of the assessment and strategy and the confidential commitments by firms. The ITC must also determine whether there is a reasonable expectation that the strategy, plus the commitments, will enable the domestic industry to adjust to import competition and lead to a domestic industry that can be competitive (even if smaller or differently composed) after relief expires. If the answer is yes, and the petitioner has not withdrawn its assessment and strategy, the ITC sends it and the commitments together with its report to the President.

If an assessment and strategy has been submitted to the

President in a 201 case, he must provide the import relief recommended by the ITC, or substantially equivalent relief, or immediately submit "fast track" legislation allowing him to provide no relief or other relief. Unless the bill passes, in 90 days the President must proclaim the ITC's recommended relief.

If relief is granted in a "strategy" 201 case, the assessment and strategy becomes public. Afterward, industry adjustment is monitored by an interagency committee including USTR, Labor and Commerce, which must also make recommendations for government actions or new legislation (given "fast-track" treatment) to aid adjustment by the industry. If the committee decides the firms or workers are not following through on the strategy or commitments, it then consults with the original plan development group or with firms in the industry. If then the committee decides the compliance failure is not justified by changed circumstances and has adversely affected implementation of the (adjustment) objectives of the strategy, the President can request a review by the ITC, and then can terminate or modify the import relief.

The existing provision of law requiring the President to consider the effect of import relief on consumers is amended to make the ITC's estimate (see section 301 above) determinative on this issue.

As a fundamental principle, the Administration opposes limitation of the President's discretion in section 201 cases. Only the President can give the fullest consideration to whether taking escape clause relief is in the national economic interest. Elimination or curtailment of the President's discretion, as in section 305, would place the ITC, an unelected commission, in the position of making policy decisions with large consequences for the United States. This would be an unprecedented and unwise change in the ITC's mission.

We support the use of section 201 import relief to adjust to import competition. But we can't accept this proposal, which would establish an industrial policy to assist uncompetitive firms at the expense of competitive sectors.

It would lead to bad economic decisions. Government officials do not have the expertise to either make or second-guess business decisions. They are not, and should not, be legally accountable for those decisions. And the tripartite approach would politicize and distort those decisions.

It commits the government to ensure that the plans work. This commitment may result in excessive import protection or pressures to provide preferential treatment in regulatory or administrative decisions, burdening the rest of the economy.

Individual firms should make their own plans. They should base their plans on their own projections of their future market and their own willingness to commit resources to the task.

Section 306 -- Import Relief

Requires the President to consult with the TPC before making his determination regarding import relief.

Provides additional options for import relief:

- accelerated antidumping/CVD cases if appropriate. An ITC determination of serious injury (with respect to global imports) would be treated as an affirmative ITC determination of material injury (with respect to dumped or subsidized imports from those countries subject to the antidumping or CVD investigation);
- limited antitrust exemptions for mergers and acquisitions that are reasonably related to enhancing competition with foreign competitors to whom market share has been lost and that outweigh adverse competitive impact on the domestic market (considering worldwide competition); and
- multilateral negotiations to address problems not susceptible to unilateral solution, such as global oversupply or diversion because of government targeting. The President then has one year to negotiate. Where negotiations fail to provide substantial relief from the serious injury, the President must proclaim the relief the ITC originally recommended, unless he obtains "fast track" legislation authorizing him to provide no relief or different relief.

We oppose the provision of accelerated antidumping or countervailing duty cases as a form of relief. The Commission is already required to report to Commerce on any suspected dumping or subsidization that causes increased imports (see section 201(b)(6)). Also, the statutory definition of industry in section 201 is different from that in Title VII of the Tariff Act of 1930, so the ITC often defines the industry in a 201 case more broadly than in an antidumping or countervailing duty case. And a serious injury finding with regard to all imports is not equivalent to a material injury finding with regard to only dumped or subsidized imports. Since the Antidumping Code and the Subsidies Code each require a finding of injury caused by the dumped or subsidized imports, this provision violates our international obligations.

The Administration has proposed limited antitrust exemption for mergers and acquisitions as an alternate form of import relief, which would bar the industry from again seeking import relief for 10 years. We support this section to the extent that it is consistent with the Administration proposals. Antitrust

relief should be provided as an alternative to other import relief, not in addition to such relief; "double-dipping" of this type could have a big negative impact on both competition and consumer welfare. Furthermore, this proposal would give excessively broad immunity from legal attack for mergers and acquisitions under section 7 of the Clayton Act and section 1 and 2 of the Sherman Act. Unlike the Administration bill, this proposal could immunize even monopoly situations.

The drawback to the new relief option providing for multilateral negotiations is the lack of flexibility in the event that negotiations fail to produce substantial relief in one year. It would be better if it were made parallel to existing provisions in section 203 on orderly marketing agreements. We need to ensure that any multilateral agreement is temporary and does not result in the cartelization of international trade.

Section 307 -- Review of Certain Determinations

A general provision tailored to fit only the footwear and copper industries; changes the rules to legislate relief for these industries. If, within a year after the date of enactment, either industry files a petition to review its past 201 injury determination, the ITC would be required to rule on the review in 60 days (and recommend relief if it reaffirms the past injury finding). The case would be treated as if an assessment and strategy had been submitted, and as if the ITC had found a reasonable expectation that the strategy would enable the industry to adjust to import competition without further import relief. The effect of this would be (see section 305 above) that the President would have to provide the relief recommended by the ITC or substantially equivalent relief, unless fast-track legislation authorizes denial of relief or different relief.

The reasons for our opposition to section 305 apply to this section as well. We must strongly oppose any decrease in the President's discretion under section 201. It is inappropriate to legislate exceptions in our trade laws for the copper and footwear industries.

Senator DANFORTH. Mr. Ambassador, thank you.

I am told that you have an 11:05 meeting at the White House, and that therefore you will have to be leaving here at about quarter to 11. Obviously, we are going to run out of time for questioning, but the early bird list that I have is Danforth, Heinz, Baucus, Long, Mitchell, Bentsen, Roth, Chafee, those who are here or have been here.

Let me just make one point to you and ask if you would respond to it.

I think that the problem is that with the footwear case there is created a possibility that an industry can make a very strong case of injury; that it can expend enormous amounts of time and resources prosecuting a case before the International Trade Commission and end up with nothing, zero, totally emptyhanded.

If that happens, then, of course, the clear message to other industries is if you have sufficient political clout, don't pursue section 201. Write your Congressman. That is why the textile people did not follow 201. Why did they have to? It is a matter of pure muscle.

And after the footwear case, they were proved right, you know. That was the wise approach. Why waste your time in 201.

My question is just the single question: Do you think that 201 cases should raise the possibility of being a total blind alley even if an industry wins it? Or do you think that a successfully prosecuted 201 case should lead to some kind of remedy or relief or positive avenue of pursuit for that industry?

Ambassador YEUTTER. Well, Mr. Chairman, first of all, as I said, it seems to me that the record through the years on section 201 is really not that discouraging under this President or any other President, as Senator Evans indicated.

Senator DANFORTH. But I am not asking you a fact question or a review of history. I am just stating that in at least one case there was a total blank. Should that total blank be an option if you successfully win the case or shouldn't there be something that is offered to the affected industry?

Ambassador YEUTTER. Senator Evans had some earlier comments and I would subscribe to those, that the U.S. ITC finding really doesn't go into all the aspects of the decisionmaking process. You have got to give the President of the United States some discretion to deal with issues that just cannot be dealt within an independent commission such as the U.S. ITC.

So you are really talking about what constraints, if any, are applied to Presidential discretion, and then obviously a question of the judgment of the President of the United States in a given case.

And without getting into a debate on footwear, because you and I have talked about that many, many times, it does seem to me that what section 201 provides in the way of discretionary criteria is really very appropriate. You know as well as I do.

Senator DANFORTH. Your view is that the President should be able to say drop it.

Ambassador YEUTTER. On the basis of those criteria, absolutely.

Senator DANFORTH. All right.

Ambassador YEUTTER. Because it seems to me that those are very legitimate criteria. Those are the kinds of things that a President of the United States ought to consider.

Senator DANFORTH. We are not going to explore antitrust relief. We are not going to explore some sort of special trade adjustment assistance.

The answer of the President should be, he should have discretion to say drop it.

Ambassador YEUTTER. Yes.

This is not, however, to say that we should not explore the items that you mentioned, or others. It would seem to me that it is appropriate for the President of the United States to explore anything of relevance in that case in making that decision.

I would like to see wide open criteria for the President. Obviously, you may decide that the criteria ought to be more limited than that for Presidential discretion. But, clearly, it seems to me that we ought to be able to reach agreement on what are legitimate, logical, rational criteria for a Presidential decision that goes beyond the U.S. ITC.

But if after considering all those criteria the President decides that no relief is appropriate, it seems to me that is a decision that the President of the United States ought to be able to make.

If there be violent disagreement with that decision, well the answer, of course, is to change the President of the United States, or change the U.S. Trade Representative, or both.

Senator DANFORTH. Well, I don't want to do either of those. [Laughter.]

Senator Heinz?

Senator HEINZ. Mr. Chairman, thank you.

Ambassador Yeutter, you cited as one of your success stories the President's decision on carbon steel. I think it is rather ironic you should cite that as a success story because shortly after the President decided to implement a voluntary program of steel restraint, one steel company—Wheeling Pittsburg—went into bankruptcy. Today as we sit here, the Nation's second largest steel company has gone into bankruptcy; the LTV Co. announced this morning.

That steel company is composed of what were the third and fourth largest steel company, namely, the Jones & Laughlin, division of LTV, and the Republic Steel Co., headquartered in Cleveland.

What the administration, in fact, did under the section 201 petition was to say no to it. They rejected the ITC's recommendation for relief and instead chose to implement a voluntary restraint program with a goal of 18.5 overcharge for imports' share of the market, excluding semifinished.

In view of the administration's decision to go the so-called VRA route, the fact that during 1985 the import share of market was no place close to the 18.5 percent promised—it was due 25 percent—and in view of the bankruptcy of the nation's second largest steel maker today—and I suspect that at least one other may shortly follow—would you please explain why you consider the steel decision a success?

Ambassador YEUTTER. Well, Senator Heinz, first of all, I did not cite it as a success. I cited motorcycles as a success. And I was agreeing with you that motorcycles is one of the success stories of section 201.

Senator HEINZ. I thought it was one of the four where you said the administration granted relief.

Ambassador YEUTTER. Correct.

Saying the administration granted relief, and saying that it was a success story, are two different things.

Senator HEINZ. Just to clarify the record, did the administration grant significantly less relief than the U.S. International Trade Commission recommended?

Ambassador YEUTTER. I am not sure that I can make that judgment.

It was necessary, according to our general counsel—and this precedes me, as you know—to go beyond section 201 in dealing with that case because the U.S. ITC in that particular case did not find injury on pipe and tubing and some of the other products. And that was the reason for, in a sense, abandoning the 201 process, going outside into the VRA operations.

But one of their more or less relief was granted, it seems to me, as not of any particular relevance. What is relevant is whether or not a proper response was made in that situation. I did not have anything to do with that response, you know. But it does seem to me that what has ultimately emerged is a process that is really worked out quite well today.

You are correct that the import level——

Senator HEINZ. Did you say "quite well?"

Ambassador YEUTTER. Quite well today.

Senator HEINZ. For the steel industry?

Ambassador YEUTTER. May I finish my answer, Senator?

Senator HEINZ. I am sorry. Excuse me. I did not mean to interrupt.

Senator DANFORTH. I am going to interrupt after a short response because we have a number of Senators present and the Ambassador has only 12 minutes before he has to leave. So if you could respond.

Ambassador YEUTTER. Can I quickly answer that, Mr. Chairman?

Senator DANFORTH. Yes.

Ambassador YEUTTER. I said "quite well today," because, as you know, the import levels are trending down. They were down to about 20 percent, which is not too far from that 18.6. The last time we had a monthly report we think they are trending in the proper direction, and that that program is working as it was intended.

I am well aware of the economic travail in that industry, Senator Heinz. You are, too, because you represent a vast segment of it.

I am chagrined to learn of the bankruptcies in the industry, but I believe both of us know that bankruptcies are caused by a variety of factors, only one of which is imports.

Senator DANFORTH. Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

Ambassador Yeutter, you and others in the administration have often characterized the House bill as protectionist and every other perjorative term known to mankind.

Ambassador YEUTTER. It is deserved.

Senator BAUCUS. Could you compare the House bill with the Senate bill's section 201 provisions? Isn't the House bill much less protectionist and much more in conformance with the administration's view on section 201 than the Senate bill?

Ambassador YEUTTER. Well, let me say this, that certainly we have major reservations about the Senate provisions that are being discussed this morning. Whether they are protectionist or not obviously depends on the administration of these provisions. But, clearly, they span as protectionist.

Senator BAUCUS. If the administration had to choose between the two, which would the administration prefer?

Ambassador YEUTTER. Well, we would obviously not like to choose between the two at all because we feel that section 201 as it is presently written is well drafted, clearly in conformance to the GATT, and is being administered in the proper way, both by the U.S. ITC and the administration.

Senator BAUCUS. As an impartial objective observer, wouldn't you say that the House bill is more in conformance with the administration's view than the Senate bill?

Ambassador YEUTTER. I would say that the House bill is on this provision perhaps less onerous than the proposed Senate version, yes, sir.

Senator BAUCUS. The point is that, first, the House bill is not as protectionist as you and others in the administration have labeled it, at least not on section 201, because it is much more in conformance with the administration's view——

Ambassador YEUTTER. But it has 458 pages.

Senator BAUCUS. I understand that. There is give and take. But at least on section 201.

A second fundamental point raised by Senator Danforth is this. What certainty do petitioners have today when they petition under section 201 that they will be granted appropriate relief?

It seems that today they have no assurance that they will be granted any relief. The analogy is perhaps not 100-percent accurate. But compare it with the judicial system. Today, when someone goes to the trial courts, and the judge or the jury rule in favor of one party or the other, there are some constraints on the appellate court's review. And there are standards of review, too.

Under section 201, for all intents and purposes, there are no standards. It really comes down to the absolute discretion of the President.

Presidents come and go. Some Presidents are very much in favor of free trade and some Presidents aren't. So it seems to me we have to find some way to give greater certainty to petitioners under section 201, when in fact they have a very, very good case and should be granted relief.

Some of us are a little disturbed that the administration seems to be stonewalling. And I think that, given our form of government, we have to reach some compromise.

Ambassador YEUTTER. Senator Baucus, I indicated that there are a number——

Senator BAUCUS. Mr. Chairman, I am through with my time here.

Ambassador YEUTTER. Well, if I may respond in 30 seconds.

I indicated there are a number of things in section 201 that can be done that would be positive and helpful. They clearly would not go as far as what you are contemplating here because you are asking for a certainty of response, and I really do not believe that should occur.

It is much different from a judicial analogy where there is someone who is right and wrong. There isn't anybody being wronged in this case. We are talking about international competitiveness here and the fact that we have an industry that can no longer compete satisfactorily.

Senator BAUCUS. I am sorry. There is no right or wrong in a judicial case, just the facts and the law. The same is true here.

Ambassador YEUTTER. Well, but——

Senator DANFORTH. I think there is a pretty good record of the difference of opinion at this point. Senator Mitchell?

Senator MITCHELL. Thank you, Mr. Chairman.

Mr. Ambassador, if I may just pursue the line that Senator Danforth and Senator Baucus also pursued, I think the problem really is the footwear industry decision. Here is an industry that followed the rules. Imports were at 77 percent. The International Trade Commission unanimously ruled there was injury, and by a 4 to 1 decision recommended relief, and the President said no under the absolute sole discretion given under this law.

And so, as a matter of fact, imports now exceed 80 percent. And the President's decision will, of course, cause the total destruction of the domestic industry.

Maybe that is a desirable result by your standards. But I say to you it is not a desirable result for the hundreds of thousands of Americans whose livelihoods depend on that industry.

Why should the textile industry have pursued that course? Imports were not 77 percent there. It didn't have anything like the argument that the footwear industry had.

And in addition, with respect to the textile industry, as you know, the multifiber arrangement predated section 201. And since the purpose of section 201 is to impose some form of import restriction, they already had that, supposedly. Although, of course, the administration never met the objectives that the President stated he had.

And so I cannot see how you can make an argument that the textile industry did not follow this section of the law, or that this is a meaningful section.

I think the footwear industry case stands as a beacon for everyone. I mean, you got the message across that there are not going to be any restrictions on imports under this administration in any meaningful way except for a few politically sensitive cases.

And so anybody, any industry, that would spend hundreds of thousands of dollars to pursue a case would be considered foolish after that decision. And the stockholders of that company would have a right to ask the management, "what are you doing wasting our money pursuing a case in view of that decision because you don't have anywhere near the case the footwear industry did." It is certain that there will be very few industries that will ever follow this process that will have the case the footwear industry had.

And under those circumstances, I think that we would be irresponsible in the Congress if we did not take some action to at least provide some framework for Presidential decisions.

I think Senator Danforth hit it right on the head. Somebody follows the process, wins the case—wins the case—and ends up with nothing. It is one thing for you to take the number of cases and say in a certain number there was no initial favorable decision. No one disagrees with that. There are going to be such circumstances. But when someone wins the case, has an overwhelming argument in their favor, and then ends up emptyhanded because of the absolute sole unfettered discretion of the President, bound by no standard, under no review, then I think that any industry that tried to pursue that would be foolish, would be wasting time and money, and the only recourse they have is to try to come to the Congress, and through the use of political pressure, try to get some restrictive legislation passed.

Ambassador YEUTTER. Senator Mitchell, with all due respect, I just do not agree with any of that. I really believe that that overstates the footwear case in a dramatic fashion.

After all, the shake and shingles people did win more recently in a case that was somewhat similar to footwear. They won it without even using a Washington, DC, lawyer.

Senator MITCHELL. Just a minute. I have got to respond to that. That is a blatantly political decision, having to do with the Canada free trade negotiations.

Ambassador YEUTTER. That is right.

Senator MITCHELL. You were just out in Idaho where the incumbent Senator said that he won that concession from you as part of the vote on the Canada free trade zone. You know that as well as I do. That had nothing to do with the facts. That was a purely political decision to get the Canada free trade zone through Congress.

Ambassador YEUTTER. Senator Mitchell, that issue was not even discussed as a part of the United States-Canada free trade debate here.

Senator MITCHELL. There was no discussion about U.S. lumber?

Ambassador YEUTTER. Of shakes and shingles. Shakes and shingles and timber was discussed obviously. But the shakes and shingles case, which is a 201 case, was not even on the President's desk at that point in time.

Senator MITCHELL. So you are now saying that the Canada free trade vote had nothing to do with the shakes and shingles case?

Ambassador YEUTTER. Absolutely.

Senator MITCHELL. All right. Thank you very much.

Senator DANFORTH. Senator Roth.

Senator ROTH. I will be very brief, Mr. Chairman. I want to make a couple of comments and ask for the Ambassador's comment in return.

First of all, as you know, I agree with much of your criticism of the proposals. I am somewhat disappointed, however, that you did not come out in support of what Senator Chafee and I have proposed as a means of strengthening section 201, and would urge you to look at it from that standpoint.

But what I would really like to comment on, because I think passions are very high, emotions are very deep in this situation. And if we are going to avoid some of this protectionist proposal—we are talking about fair trade here—it seems to me that the administration must take a more affirmative stance on the question of trade adjustment, particularly for workers.

Now I pushed through an extension, but it was over the administration's objections, in all fairness. I think I have a proposal that is realistic. It is financially sound. We propose a new, innovative device of financing it. And I would urge that if we are going to move ahead and have what we consider fair trade policies, that we have to move in the area of trade adjustment for workers.

I would just urge you to become a spokesman for that and ask you to make any comment at this time you think appropriate.

Ambassador YEUTTER. All right. Thank you, Senator Roth.

First of all, without getting into details of your legislation, I have indicated earlier that there were a number of aspects of the proposals in 1860 and your legislation that would be acceptable to the administration. We do not have time to get into those in detail now while I am here, but I am happy to discuss them more thoroughly and comprehensively with you at a later date.

As to adjustment assistance, that has obviously been a continuous issue for all of us for a long time. And we are still openminded on the question of how that can be made a more feasible and rational kind of program and we continue to work on that.

Bill Brock, as Secretary of Labor, of course, is in the lead on that. But I know that his mind is open; so is mine. We talk about it together, and so it may be that we can make some progress on time and adjustment assistance in the future.

And while I am at it, Senator Danforth, if I may, I would like to go back and make one further comment to what Senator Mitchell had to say.

Senator DANFORTH. Let me just say this. You are on your own now because it is quarter to.

Ambassador YEUTTER. If I do?

Senator DANFORTH. It is quarter to 11. I know Senator Durenberger wanted to ask one question. Do you have 2 minutes in which he could ask a question?

Ambassador YEUTTER. Sure.

Senator DANFORTH. And you could respond, and then respond to Senator Mitchell.

Ambassador YEUTTER. All right.

Senator DANFORTH. Also, it is my understanding that Mr. Holmer would be able to perhaps stay. I know Senator Heinz has some further questions and maybe other Senators, too.

Ambassador YEUTTER. Certainly. And I will be glad to come back, Senator Danforth, if need be.

Senator DURENBERGER. Mr. Chairman, to simplify things, I would ask unanimous consent that my 5-minute question, my 3-minute brief statement, and the Secretary's 2-minute response be included in the record at this point. And I do have a series of questions relative to the relationship between the Congress, the President and the ITC that relate to 201 that I really would appreciate the Ambassador responding to. But I think it would be a lot better if we did it in writing.

Senator DANFORTH. All right. Well, could you do that in writing for the record?

Senator DURENBERGER. Certainly.

[Answer not available to press time:]

Senator **Danforth**. And would you want to have the last swing?

Senator **Durenberger**. Yes; if I may take my last swing. If I may just take 30 seconds. And this is for you too, Mr. Chairman, as well as——

Senator **Danforth**. At me too or for the——

Senator **Durenberger**. Not at you; with you. Always with you.

It is on the question of limiting Presidential discretion. And I just wanted to draw specific reference to the criteria that are in the law today which seem to me to be reasonable criteria. One of them, Senator Mitchell, is the probable effectiveness of import relief to aid that industry to adjust to competition. I think that is obviously the heart of the matter.

A second one is the effect on consumers. A third one is the effect on broader international economic interest, which gets into the foreign policy things, of course. A fourth one is the effect on our international obligations through compensation. In other words, how much are we going to have to pay in compensation if we grant relief? And a fifth one is the impact on third-country markets, the broader international trade picture.

A sixth one is the economic and social cost on taxpayers, communities, and workers.

Those clearly seem to me to be the kinds of things that really have to go to the President of the United States. Those are issues that no independent commission should handle. We cannot have the U.S. International Trade Commission deciding foreign policy considerations or broad international economic policy considerations.

I do not see any way in this system of Government that we have to avoid having those kinds of issues go to the President of the United States for final deliberation and decision. I just think that is the way our democratic system has to work.

We can argue obviously about the decision that is made, and we could debate footwear for a long period of time. But as I said earlier, I think the answer has to be holding the President of the United States accountable for whatever that decision happens to be. And if we had time we would go through the footwear decision item by item on that list, but unfortunately we do not have the time right at the moment.

Senator **Mitchell**. Mr. Chairman, may I respond briefly to the response?

Senator **Danforth**. Yes; well, let me ask, do you have to leave now?

Ambassador **Yeutter**. Two minutes.

Senator **Mitchell**. Less than 2 minutes.

Ambassador **Yeutter**. All right.

Senator **Mitchell**. I do not disagree with you that those factors are within the realm of the Presidency, particularly the foreign policy implications. There is no disagreement on that.

The point, which I think Senator Danforth made precisely, is that we have established a quasi-legal mechanism for the determination of whether injury exists and a recommendation as to relief.

I believe those factors should be taken into account when the President fashions the relief that is dictated by the result arrived at through the quasi-legal process. And that is really what this bill attempts to do.

It does not attempt to deprive the President of a role in this. It does not attempt to eliminate those factors from Presidential consideration. But it attempts to obviate the situation which existed in footwear and which since, to me, seems untenable; that you go through the process, you win in a quasi-legal proceeding, and then the President has the sole discretion to wholly disregard that result and to give no relief. I think those factors should be taken into account in fashioning relief, and that is really what this is an attempt to do.

So I don't think we disagree on the right of the Presidency to be involved, the obligations and the factors to be considered. Our disagreement is in that narrow band as to whether or not he should under certain circumstances, after someone wins going through the process, to be able to deny relief totally.

Ambassador **Yeutter**. Yes.

Obviously, we have a significant difference there, but we will debate that more later.

Senator **Mitchell**. I thank the Ambassador.

Senator **Danforth**. Mr. Ambassador, thank you very much. Mr. Holmer, thank you for your willingness to stay.

I want to apologize to Mr. Pratt for my departure. There is a little conference going on with the Ways and Means Committee right now, and Senator Heinz will chair the hearing.

Senator **Heinz**. Mr. Chairman, thank you.

Mr. Holmer, thank you for staying. I just want to make one thing clear about S. 1863, just for the record. It needs to be pointed out that S. 1863 only narrows the President's discretion, which has been the subject of discussion so far, if the industry assumes an additional burden, namely, that of coming up with an adjustment plan. The present process, where the industry does not assume such a burden, would still be available, and the President's status quo would be entirely preserved.

But I think what you, frankly, are just as qualified to testify on as Ambassador Yeutter is the extent to which the interagency review process and the way it works undercuts the chances of the President even getting a reasonable recommendation, let alone producing a sensible and sensitive recommendation.

Now, let me ask you this. We all know that there are a number of agencies involved in the review process of a U.S. International Trade Commission recommendation. How many agencies are involved?

STATEMENT OF HON. ALAN HOLMER, GENERAL COUNSEL, U.S. TRADE REPRESENTATIVE, WASHINGTON, DC

Mr. **Holmer**. My guess is, Senator Heinz, that there are, I think, 10 or 11 departments or agencies that are a part of the Trade Policy Committee.

Senator **Heinz**. So we are not sure, but the number is very large, and it is at least 10.

Mr. HOLMER. And I can certainly provide that for the record, Senator Heinz.

There are not as many agencies that are represented on the Economic Policy Council through which these recommendations flow. I would guess there are six to eight departments or agencies that are represented.

Senator HEINZ. So the first review process is with 10 or more agencies, and then it is narrowed down to a mere 8. Is that right?

Mr. HOLMER. Well, if you include—and including among those six or eight are those White House agencies, like the Office of Management and Budget, or the Office of Policy Development, that are inevitably—the Chief of Staff's office—that are inevitably going to be involved in any decisionmaking process that is proposed to the President.

Senator HEINZ. Now, among those agencies are the State Department, the Office of Management and Budget, which you just mentioned, the Council of Economic Advisors. Is that correct?

Mr. HOLMER. Yes, sir.

Senator HEINZ. To your knowledge, have they ever supported relief, the relief recommended by the International Trade Commission?

Mr. HOLMER. Yes.

Senator HEINZ. I mean, at the first go around. I don't mean the President's decision in the Harley Davidson case after it had been made. Obviously, they support the decisions after they are made. I mean, in the review process.

Mr. HOLMER. Right.

I would need to have a chance to review that carefully, Senator Heinz. I am confident that there are circumstances during this administration where some of those agencies have supported recommendations.

Senator HEINZ. Can you think of one?

Mr. HOLMER. Well, if I could—and I wouldn't want to state this unless I would have a chance to go back and check the records and was absolutely sure.

Senator HEINZ. But you will admit it is hard to think of one.

Mr. HOLMER. Well, I would not be in a position to be able to advise this committee publicly as to the positions that were taken by individual departments or agencies in that recommendation process.

Senator HEINZ. You have got a large staff from the USTR sitting here in the room, surely with collective institutional wisdom. You don't have to name the case, but I will rely on your integrity and honesty as to whether there is one instance of those three agencies, in the first instance, going along with the ITC. Is there one instance known?

Mr. HOLMER. My staff—and as you know, I have been at USTR for slightly less than a year—my staff advises me that the answer to your question is yes.

Senator HEINZ. There is, in fact, one.

Mr. HOLMER. Well, that was your question.

Senator HEINZ. Is there more than one?

Mr. HOLMER. Yes.

Senator HEINZ. I gather it is a relatively modest situation.

Would it be fair to say that it is rare?

Mr. HOLMER. It is certainly fair to say that the agencies that you indicated favor relief less frequently than the Commerce Department or the U.S. Trade Representative or other agencies that, as we indicated, frequently carry the day in persuading the President to provide the import relief under section 201.

Senator HEINZ. I think we could characterize—would it be unfair to characterize it as rarely?

Mr. HOLMER. It may be.

Senator HEINZ. To save time, obviously you don't have to reveal what agencies did what in terms of the specific agency, but I think it would not be unfair to ask you to compile a statistical analysis of those three agencies aggregated as to the cases that we have in question.

Mr. HOLMER. We will pull that together for you, Senator.

Senator HEINZ. My time has expired.

Senator Baucus, do you have any questions?

Senator BAUCUS. I have no questions. Thank you, Mr. Chairman.

Senator HEINZ. I have one last question then.

I mentioned a moment ago that the second largest steel company had gone into bankruptcy. Many shoe companies have gone into bankruptcy. Many apparel and textile mills are going into bankruptcy. American semiconductor people are going into bankruptcy. Do you believe that there are any failings with our trade policy? Do you think our trade policy is satisfactory?

Mr. HOLMER. I certainly do, Mr. Chairman. I would be happy to go into great detail——

Senator HEINZ. Well, that is all right. I was afraid I was going to get that answer.

Senator Baucus earlier raised the question of whether the administration was simply going to stonewall any Senate, or Senate-House, initiative on trade. And is it fair to say that as of today the answer to that question is still yes?

Mr. HOLMER. Absolutely not, Senator Heinz.

Senator HEINZ. Would you clarify for us the administration's position? Will you work with us for a trade bill?

Mr. HOLMER. Yes. And as I indicated, I was out meeting with 6 or 8 or 10 Senate staffers on the Finance Committee yesterday, and as I indicated to them, and I will indicate to you, we do want to work with this committee and with the Congress in terms of fashioning acceptable trade legislation. We are not eager to throw our principles in the trash can during that process, but we are willing to work with you in trying to fashion a bill that would be acceptable to the administration and to you.

Senator HEINZ. Would you be willing, as part of that process, to give us an administration proposal as the starting point?

Mr. HOLMER. I expect that that is not likely to be forthcoming at least during 1986. And I guess I would leave it at that. But we are certainly willing to sit down——

Senator HEINZ. Let me see if I understand the administration's position. You welcome trade legislation as long as it is consistent with your philosophy. You say you need it and want it and welcome it, but you do not have any proposal.

Mr. HOLMER. Well, I don't think that is accurate, Senator Heinz.

Senator HEINZ. All right.

If that is not accurate, why don't you give us a bill?

Mr. HOLMER. Well, we certainly, in effect, are giving you that in Ambassador Yeutter's testimony and his 10- or 12-page analysis of the section 201 provisions. You will see that with respect to Ambassador Yeutter's testimony next week on section 301 in a detailed analysis of S. 1860 and the provisions there on section 301.

Ambassador Smith was up here on GSP testimony. I will be here tomorrow on the Specter bill. We want to work with you in every way we can to advise you with respect to those provisions which we think we could support and those which we consider objectionable and why we consider them objectionable.

Senator HEINZ. All right.

Are there any further questions?

[No response.]

Senator HEINZ. Thank you very much, Mr. Holmer.

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

September 12, 1986

The Honorable Bob Packwood
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In the transcript of Ambassador Yeutter's testimony on July 17, 1986, on proposed amendments to Section 201 of the Trade Act of 1974, Senator Heinz asked two questions to which we agreed to respond in writing. First, at page 62 of the transcript, Senator Heinz asked which agencies are members of the Trade Policy Committee. Under Executive Order No. 12,188, the Trade Policy Committee members are: the Trade Representative; the Secretaries of Commerce, State, Treasury, Defense, Interior, Agriculture, Labor, Transportation, and Energy; the Attorney General; the Director of the Office of Management and Budget; the Chairman of the Council of Economic Advisers; the Assistant to the President for National Security Affairs; and the Director of the United States International Development Cooperation Agency.

Senator Heinz also asked whether the Department of State, Office of Management and Budget, and Council of Economic Advisers had supported recommendations for relief in any Section 201 cases. In order for the Executive deliberative processes to function effectively, it is important that we maintain the confidentiality of agency recommendations to the President on specific policy matters. Nonetheless, I have been able to confirm that one or more of these agencies has supported recommendations for relief on four occasions in Section 201 cases during this Administration's consideration of six 201 cases. However, this may understate such support because such records are not kept as a routine matter. There may be more such instances, or instances where support of a certain form of relief was a second alternative.

Sincerely,

Alan F. Holmer

Alan F. Holmer
General Counsel

AFH:gtg

bcc: Bill Reinsch
Len Santos

Mr. HOLMER. Thank you, Senator.

Senator HEINZ. Our next witness is Edmund T. Pratt.

STATEMENT OF MR. EDMUND T. PRATT, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, PFIZER, INC., NEW YORK, NY, AND CHAIRMAN, EMERGENCY COMMITTEE FOR AMERICAN TRADE

Mr. PRATT. Good morning, Senator. I appreciate being here this morning to address the issue of the 201 section, legislation.

I would like to say in the beginning that I will be speaking for ECAT, the Emergency Committee for American Trade, which represents 60 major American companies who feel largely on a world basis, and also, although I am not speaking for them, I am part of the same organization of the Business Roundtable, and, in general, the positions would be similar, although I am not speaking specifically for the round table.

As companies who, among other things, tend to have large international businesses, it would not be surprising to the committee I know that we have the same concerns that Senator Evans has about the other side of impact of trade relief, import relief, and the payment that has to be made for it. So that the general feeling of the business community, the major companies that I represent, is to be concerned about changes that would exacerbate the problems that that could cause.

On the other hand, it is a difficult time we are in and all people in the business community do not feel the same, but I think I can say that I am speaking in matters that would be generally supported by the majority of the business community.

We in the business community are, however, concerned, as you are, about the trade deficit. It certainly cannot be indefinitely sustained at anything like today's level. In fact, it is a great concern to us that it has happened this long. Something has certainly got to be done.

Hopefully, solutions will be forthcoming to this in other areas where we think perhaps the major problems lie rather than in the trade policies that we are talking about.

The thing that is of great concern to us, of course, is the Federal budget deficit, and we hope that the exchange value of the dollar will continue to improve, and that our Government will continue its support of that action, and that the economies of our major trade partners will grow at a more rapid rate so there will be better customers for us. We believe these things are the more critical things we face, and we think it is in these areas that we really have to look for the solutions to trade related problems.

In general, we, as chief executive officers, as the Senator previously spoke said he was at one time, we are concerned that it is important that the President have authority to act and to vigorously defend and assert U.S. rights and interests in the trade area, and that he indeed at the same time keep reasonable discretion because of the variety of issues that he has to take account of.

Therefore, above all, we urge the Congress as it considers amending the trade law to do so in a deliberative manner that will avoid shooting ourselves in the foot, which we have sometimes done in the past. And I understand from the previous comments that that is what you are trying to do about in these hearings.

We in ECAT do believe that section 201 as it now stands strikes a reasonably appropriate balance between protection from injurious imports and other considerations of the national interest. Obviously, there is room for difference of opinion there.

We recognize, however, that there is dissatisfaction in the Congress with the way that section 201 has operated in some cases, and that there is a consequent desire to amend it in a way that will make import protection more certain through lowering the threshold for import relief and through limiting or eliminating the President's discretion.

We urge the Congress to bear in mind that import relief—and I will here be somewhat repeating statements of others—keep in mind that import relief, pursuant to section 201, authorize the exporting nations whose trade is restricted to redress the balance either by receiving compensation or by retailiating against the volume of U.S. exports. That is approximate to the export damage caused them by section 201 import restriction.

This is a fundamental point to be considered in the amendment process since the price for section 201 import protection is paid by industries and workers not parties to the petition. Indeed, our company.

This price, of course, does have an effect on the U.S. consumer in many cases in the case of the form of higher prices.

However, we have tried to be responsive to your challenge to be open minded and to think of if indeed it is to be amended, what kind of things might be acceptable even though our preference would be at this point for no amendment. And in this area I suspect that all the business community would not agree with what I am about to say, but the group representing ECAT did agree to make this kind of a proposal.

As far as the causation standard for import relief, Congress over the years has progressively lowered the statutory threshold standard for import relief to the current standard that imports be shown to be a "substantial cause of serious injury."

While opposed to a general lessening of that current standard, we believe it might be considered appropriate to consider establishing a lesser standard that would be operative only during periods of domestic economic recession.

Since "substantial" is defined under the legislation to mean "a cause no less important than any other cause," it is likely that economic recession, as in the earlier United Automobile Workers section 201 petition, will be found to be a more important cause than the imports.

To the extent that this is true, section 201 could be inoperable during recessionary periods. Public faith in section 201 would consequently be diminished and petitioners for import relief would likely seek restrictions directly from the Congress as has been mentioned.

On trade adjustment plans, our thoughts are, of course, an underlying principle of both section 201 and article 19 of the GATT, is that the provision of import relief is to provide time to the protected industry to restore its competitiveness.

Accordingly, ECAT believes that it makes sense that section 201 petitioners submit an adjustment plan as part of their petition. Such plans should be encouraged, and they should be a factor to be taken into account in deciding whether to provide import relief.

In connection with section 201 petitions under the separate recessionary tract, a possibility that I mentioned above, we could consider it might be reasonable to actually require an adjustment plan in cases with that lower threshold.

On the subject of Presidential discretion, we believe the President should retain his discretion not to apply recommended section 201 import relief if he deems that to do so would harm the overall national interest.

An exception here again to try to be—consider other possibilities in response to your desires, might be made in cases where the ITC unanimously finds serious injury. In such cases, it might be reasonable to require the President to act affirmatively either by providing adjustment assistance or some other form of relief which he might find reasonable if the sought for relief itself was not deemed to be appropriate.

ECAT, therefore, would—and also ECAT, in another issue that was raised we were asked to comment on, ECAT would not object to Presidential—although we wouldn't prefer this—we wouldn't object to Presidential 201 authority being transferred to the USTR as one of the possible suggestions so long as the interagency processes are continued and so long, of course, as it is understood that the USTR would be free to seek the advice of counsel of the President when it is clear that important national interests are involved.

I have a longer written statement which I have provided to you, and I have tried to stay within the roughly 3 minutes that you asked, and I will be available for questions.

[The prepared written statement follows:]

STATEMENT OF EDMUND T. PRATT, JR., CHAIRMAN EMERGENCY COMMITTEE FOR AMERICAN TRADE, BEFORE THE SENATE FINANCE COMMITTEE HEARINGS ON REFORM PROPOSALS OF SECTION 201 OF THE TRADE ACT OF 1974

Thursday, July 17, 1986

Mr. Chairman, thank you for the opportunity to testify today on Section 201 of the Trade Act of 1974 on behalf of the 60 members of the Emergency Committee for American Trade (ECAT). U.S. trade policies have a fundamental impact on the businesses of our members who have annual worldwide sales of close to $700 billion and who employ over five million workers. ECAT members account for a substantial share of total U.S. exports and are among the largest U.S. employers and overseas investors.

Although this hearing is focused on Section 201, I hope that the Committee will bear with brief comments that are made later in my statement on other major issues of great concern to ECAT that are included in S.2099 and S.1860 as well as in other trade bills before the Finance Committee.

In considering changes in U.S. trade policies, we in ECAT recommend that amendments to trade law should meet the following basic criteria. They should:

-- foster U.S. international competitiveness

-- accord with U.S. obligations under international law

-- leave the President with adequate flexibility and authority to weigh the overall national interest against specifically recommended trade restraints, and

-- recognize that gaps in international commercial law and practice should be solved through international agreement and not through unilateral actions.

With these criteria in mind, we offer the following suggestions concerning Section 201.

SECTION 201

Section 201, the so-called "escape-clause", is the conforming U.S. statute to Article XIX of the GATT, which authorizes the imposition of protective import measures to alleviate serious economic injury caused by competitive imports that are fairly traded.

We believe that Section 201 in its present statutory form strikes an appropriate balance between import protection and other considerations of the national interest. While we would clearly prefer to see Section 201 kept as it is, we are aware that there is widespread domestic concern with Section 201 and a consequent desire to change it in ways that will both lower the statutory threshold for import relief and make recommended import relief under Section 201 more of a certainty than at present.

From the viewpoint of those desirous of import protection under the "escape-clause", the record of the past few years is worth looking at. Since 1981 decisions have been made by the International Trade Commission (ITC) on 16 Section 201 cases. Of these, the ITC found serious injury and recommended that the President impose import relief in 6 of the cases. Of this number, the President provided import relief in 4 instances, which is a high percentage of affirmative action. I mention this record since it sheds light on the question of whether Section 201 should be amended to provide automatic import protection when recommended by the ITC.

Causation Standard for Import Relief

We in ECAT are concerned with the severe costs that could be involved in a general lowering of the threshold for import relief. Too easy a test would result in either substantial compensation bills owed by the United States to foreign countries whose trade would be disadvantaged by Section 201 relief or in foreign retaliation against U.S. export industries if our trading partners decided against accepting compensation offered to them by the United States. In either case domestic industries and workers not parties to the Section 201 process would have to pay the price for the import relief granted to others -- a not appealing prospect.

As I believe members of the Finance Committee well know, import restrictions imposed pursuant to Section 201 almost always modify a U.S. import concession that other countries have paid for in the form of a reciprocal lowering of their own import barriers. Since something of value has been taken from them by escape-clause restrictions, the GATT rules authorize them to right the balance by imposing restrictions of their own against a similar volume of their imports from the United States -- or from any other country taking similar action -- or by being compensated by the United States through the lowering of U.S. import barriers on a like volume of their exports as that affected by the Section 201 restriction.

An exception to the compensation/retaliation problem , of course, occurs in cases where Section 201 import relief is accomplished through a negotiated settlement with the trading partners whose imports are threatened to be restricted.

Another aspect of the policy dilemma raised by a prospective lowering of the threshold for import relief is that any advantages provided an industry through import restrictions could more than be offset by net costs to the economy as a whole. Consumers, for example, would pay higher prices than they otherwise would. The more basic the protected product, the more the higher costs would be spread throughout the economy, thereby undermining the competitiveness of other industrial sectors in both domestic and foreign markets.

Because nothing in the Section 201 process provides assurance that import relief is conditional on a plan to adjust to the import competition, lowering the threshold for protection risks increasing the number of economic sectors requiring continuing relief in some form. This is a serious risk which raises the question of whether Section 201 import relief should be conditional on an acceptable adjustment plan.

As devotees of the historic U.S. trade policy of seeking liberalization of barriers to international trade, we are hesitant to recommend Section 201 changes. But we also recognize the significant strains being imposed on that policy by rapidly increasing foreign competition -- often encouraged and directed by foreign governments -- and by the generally depressed state of the world economy.

As mentioned earlier, we believe that the current threshold for import relief is about right. It requires that imports be found to be a "substantial" cause of serious injury. "Substantial" is defined as a cause "no less important than any other cause."

While we are opposed to a general lessening of this causation test in Section 201, we do believe that it would be appropriate to consider changing the threshold test so that petitioners seeking Section 201 relief during times of domestic economic recession would not have to demonstrate that imports are no less important a cause than the economic recession itself. Should the Congress want to consider such a limited lowering of the import causation standard, we have considered several ways in which such a result might be accomplished. The most feasible way appears to us to be a two-track system whereby the present language and provisions of Section 201 would be preserved as Track I. An alternate system utilizing a lesser degree of import causality could be created as Track II.

Track II would be available only during periods when established criteria signal the existence of a recession in the U.S. economy. The degree of causality between competitive imports and serious economic injury or the threat of serious economic injury would be less than the general "substantial" test. Whatever the adjective used, the intention should be that imports do not necessarily have to be a cause as important as or greater than any other cause. Otherwise, recession itself is likely to be considered a more important cause than imports during periods of domestic economic stagnation and Section 201 in effect will be inoperable.

We further suggest that eligibility for recourse to Track II be conditional on submission by the applicants of an acceptable plan for adjustment to import competition. The plan should be supported by both labor and management. It should set out detailed steps for overcoming competitive disadvantages (addressing such issues as labor costs and modernizing capital stock), and should propose staging requirements in the recovery process which must be met if import protection is to be continued.

ECAT believes that a strong case can be made for linking relief and adjustment in any modification of Section 201 that weakens the causal link between imports and serious economic injury. As we have noted, import relief for one industry involves costs to other industries and their workers and can involve a net cost to the U.S. economy generally. These costs can be minimized and ultimately returned if impacted industries can be restored to full competitiveness either in the impacted sector or in other sectors offering more opportunity.

Import relief confers certain benefits to the protected industries that can be roughly quantified. It would not be unreasonable to insist that net benefits be reinvested in improving competitiveness, especially under circumstances in which Track II would be applicable.

The process which we have just briefly described that would constitute Track II would encourage management and labor both to work together in facing up to their joint problems and to undertake joint efforts to improve their competitiveness as a condition for temporary relief.

Our suggestion for the two-track system is addressed to situations like the one involved several years ago when the ITC found in a Section 201 investigation that the then economic recession was a more important cause of the depressed auto industry than imports. Although the ITC in a subsequent case made a Section 201 import relief recommendation during a time of recession, ITC commissioners might arrive at a different conclusion in future cases.

In absence of a statutory change of the type recommended it is conjectural whether Section 201 relief will be operable during periods of economic recession since imports will likely be found to be a less important cause than recession. Congress would then be called on to provide the relief requested. Implementation of this recommendation could avoid this and would help to restore the public's faith in Section 201 as a viable import relief mechanism.

Trade Adjustment Plans

ECAT believes that plans to adjust to import competition can be instrumental in the process of adjustment and that they should be encouraged but not required to be a part of petitions to the ITC for Section 201 relief. To be economically feasible, such adjustment plans should be jointly agreed to by management and labor and such plans should be taken into account by the ITC and by the President when weighing whether to provide import relief.

In the case of the second-track just recommended above for Section 201 investigations during times of domestic economic recession, however, Congress might consider making submission of an adjustment plan a mandatory requirement.

If an adjustment plan is part of any Section 201 relief package, the continuation of relief should depend in part on whether the adjustment plan was being adhered to.

ECAT does not believe that government should be a participant in drafting the adjustment plan. That should be the responsibility of the industry and unions concerned. Government's role in the Section 201 cooperative adjustment process should be to provide adjustment assistance programs and/or import relief.

Presidential Discretion

As a general rule, ECAT believes that the President requires discretion to be able to weigh the overall national interest against the likely consequences of implementing import relief measures recommended by the ITC in Section 201 cases. A graphic illustration of why we believe this discretion is necessary was President Eisenhower's decision to reject a Tariff Commission -- the predecessor agency to the ITC -- recommendation for import relief for the domestic shoe industry in order to preserve U.S.-NATO air base rights in Spain. The Spanish Government had advised President Eisenhower that the recommended import restrictions on Spain's most important export item would cause Spain not to renew the leases for U.S. air base rights in Spain. The President decided that the overall U.S. national interest was better served by renewal of the NATO air base rights than by imposition of the shoe import restrictions.

While we can understand the disappointment and frustration that follows rejection by the President of Section 201 recommendations for import relief on the part of the petitioners and their Congressmen or Senators, we nevertheless feel that the President, as the only nationally elected official, along with the Vice President, is in the best position to weigh whether the imposition of import restrictions is in the national interest.

If there is to be any limitation imposed on the President's discretion in this area, we would hope that the limitation would be as narrow as possible. The Senate, for example, might want to consider limiting the President's discretion to cases where there is a unanimous finding by the ITC of serious injury to an industry. Of the 50 most recent findings of serious injury by the International Trade Commission, 11 were unanimous findings. In such cases, the President might be required to take action on one or more of the alternatives available to him. These include providing a program of adjustment assistance, negotiating voluntary restraint programs with foreign exporters or providing import relief along the lines recommended by the ITC.

This suggestion, however, is contingent on there being a program of adjustment assistance since it would be our intention that this be the preferred action of the President in such instances. Thus, even though the President would be required to act, he would not be forced to impose import restrictions that, as in the Spanish shoe case just referred to, could militate against the national interest.

Another proposed legislative means of limiting the President's discretion is the shift of his Section 201 authorities to the United States Trade Representative. ECAT would not object to such a shift so long as current interagency processes continue to apply and so long as it is clearly understood that the USTR is free to seek the advice of the President when it is clear that important national interests are involved in implementing Section 201 recommendations from the ITC.

Such a shift could have the positive benefit of enhancing the position of the USTR both at home and abroad.

Mr. Chairman, these are ECAT's basic comments on Section 201. As I mentioned at the outset of my remarks, I would like from here on in this statement to add for the record brief ECAT comments on several other major trade policy issues before this Committee.

SECTION 301

Section 301 of the Trade Act authorizes the President to impose import restrictions on products from countries that maintain "unreasonable", "unjustifiable", or "discriminatory" restraints that burden United States commerce. Before exercising this authority the President is expected to seek a satisfactory resolution with the country or countries concerned either through invoking the GATT dispute settlement procedures or through separate negotiations or through a combination of both. If these efforts prove unsuccessful, he can then retaliate against the foreign country in a variety of ways. Section 301 authorizes the President, however, to retaliate without utilizing the GATT procedures or without seeking a negotiated settlement.

Section 301 has been invoked a number of times. Retaliation has generally not been necessary since its invocation has led to negotiated settlements in a number of instances. Nevertheless, there is a feeling among many in the Congress that Section 301 should be amended to limit the President's discretion both through requiring retaliation and through shifting his Section 301 responsibilities to the United States Trade Representative.

ECAT's recommendations on various legislative proposals to amend Section 301 follow:

Presidential Discretion

We recommend that in instances where Section 301 is invoked against illegal foreign practices -- as measured by the standards of the GATT or any other bilateral or multilateral agreement -- and where the dispute settlement procedures of the GATT or other relevant procedures have been followed and have vindicated the U.S. claim, then the presumption should be that the President should retaliate against the concerned foreign parties if a satisfactory accommodation of the Section 301 complaint has not been achieved.

ECAT recommends that in all other Section 301 cases, the President should retain his current discretion as to whether or not to retaliate against objectionable foreign practices.

Publishing Lists of Products Subject to Section 301 Retaliatory Actions

We recommend that a procedure either be legislated or promulgated through rules and regulations whereby lists of products to be retaliated against in Section 301 cases be published in a timely fashion so that U.S. industries or firms will have the opportunity to comment as to whether their economic interests might be damaged.

Shifting Presidential Section 301 Authorities to USTR

As under Section 201, ECAT has no objection to shifting Presidential Section 301 authorities to USTR so long as interagency procedures continue to apply and so long as it is understood that the USTR is not prohibited from consultation with the President concerning issues of the national interest.

Foreign Targeting Practices

We believe that foreign "targeting" practices fall within the scope of Section 301, and that it, therefore, would be unwise and unnecessary to single-"targeting" out as a separate actionable cause under Section 301.

Since "targeting" is difficult to define, it is recommended that efforts be made in the GATT and elsewhere to seek common understandings as to which "targeting" activities are objectionable and, therefore, contrary to GATT and other international contractual undertakings.

The Question of Timing

We have no objection to reasonable time limits being imposed during which time the President would be required to conclude Section 301 cases.

Rectifying Bilateral Trade Balances

ECAT firmly opposes provisions that require the President to redress trade imbalances with countries who maintain unfair trade practices and whose trade surpluses with the United States meet certain arithmetic criteria. Arithmetic criteria should not be the determinant of trade policy. Although House-passed provisions concerning bilateral trade imbalances have waiver authorities, the provisions could well result in illegal U.S. import restrictions that would lead to direct retaliation against the United States.

Internationally Recognized Labor Rights

ECAT also objects to provisions making the denial of "internationally recognized labor rights" by foreign countries an actionable cause under Section 301. The United States is not a party to treaties specifically defining these rights. Just as in the case of the imposition of U.S. export controls for public policy reasons, we object to utilizing U.S. trade as a means of trying to accomplish social objectives in this instance. These should be pursued elsewhere.

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We feel that the proposed legislative revisions of Sections 201 and 301 are the most serious ones before the Congress. Our above recommendations are designed to respond to legitimate complaints about them while maintaining their conformity to accepted international law and practice. To do otherwise could subject vital U.S. exports to foreign restraints.

Our members have either reaffirmed or developed positions on several other U.S. trade statutes. A brief summary of our positions is as follows:

COUNTERVAILING DUTY AND ANTIDUMPING DUTY STATUTES

These are statutes designed to protect against foreign government subsidies and sales at less than fair value by foreign entities in the U.S. market through the imposition of additional tariffs to neutralize the subsidies and the less than fair value sales.

ECAT is opposed to several amendments to these statutes. Our principal objections are to the following:

Natural Resource Subsidies

We recognize the problem inherent in governments pricing their resources for general domestic consumption at lower prices than for exports, but believe solutions to this problem should be sought through international agreement and not through domestic U.S. legislation that would violate our international obligations and that could cause retaliation.

- Private Rights of Action

A proposed amendment to the antidumping statute would allow private parties to sue importers and others for economic losses caused by the importation of "dumped" products. Such damages would be retroactive for up to three years.

Under this amendment, importers could be sued if they had "reason to know" that the products they were importing were being sold at less than fair value. This "reason to know" standard is vague and it could cause considerable disruption to international trade. ECAT is opposed to it.

Diversionary Dumping

Other legislative proposals deal with diversionary dumping. Diversionary dumping would occur when an imported product contains a component part that had been "dumped" in a third country and is the subject of a U.S. antidumping duty order. Assume, for example, that an automotive transmission imported from Mexico contained a component that had been dumped in Mexico by a South Korean exporter. That fact would have to be taken into account in an antidumping action against the automotive transmission even though Mexico may not have instituted an antidumping complaint concerning the South Korean component and even though the transmission exported to the United States by Mexico was sold at fair market prices. In other words, even on fairly traded items, antidumping actions could be prospective if the fairly traded imported items contain a "dumped" component part.

This is a most mischievous amendment that could cause untold difficulties and costs to U.S. companies engaged in international trade.

Non-Market Economies

A major legislative proposal amending the countervailing and antidumping statutes deals with the question of whether there should be a pricing test for imports from non-market economies. Some believe that appropriate prices cannot be determined for products from non-market economies and that there, therefore, should be no pricing test but only an injury test. The issue is a major and timely one because mainland China has announced its desire to rejoin the GATT.

After examining the issue of whether there should be a pricing test in processing countervailing and antidumping complaints about imported products from non-market economies, ECAT recommends that there should be such a test even though construction of fair market prices will be somewhat controversial and artificial. The antidumping law applies to the rest of the world. It should not be amended to make it either more or less difficult for non-market economies to fit in to the international trading system. Without a pricing test for non-market economies, fairly priced items from them could be unnecessarily penalized. We believe that not to have a price test would bestow advantages on non-market economies.

SECTION 337

A further ECAT recommendation deals with Section 337 of the Trade Act which authorizes restraints on imports that violate U.S. patent and copyright laws. The issue is whether in addition to determining patent violations the further requirement of current law that economic injury also be demonstrated as a condition of import relief should be maintained or deleted from Section 337.

ECAT recommends that Section 337 be amended to drop the injury test required as a condition of providing import relief from imported products that violate U.S. patents and copyrights. The reason is that such violations are breaches of U.S. law which is sufficient reason for import restraints.

TRADE NEGOTIATING AUTHORITY

ECAT strongly supports adequate authorities for the President to be able to enter into comprehensive international negotiations on trade, investment, and services.

INTELLECTUAL PROPERTY RIGHTS

ECAT also strongly supports legislation enabling the President both to negotiate agreements to protect U.S. intellectual property rights and to protect these rights through appropriate amendments to trade law.

FOREIGN CORRUPT PRACTICES ACT (FCPA)

ECAT recommends passage of S.430 that would remove several of the key ambiguities in the FCPA in order to facilitate U.S. exports. An earlier survey of ECAT members showed that these ambiguities, particularly the "reason to know" standard, contributed to export losses of over $2 billion.

GENERALIZED SYSTEM OF PREFERENCES (GSP)

The Trade and Tariff Act of 1984 provides that U.S. decisions on "graduating" exports from developing countries from the GSP system take into account the record of a country on the treatment of foreign direct investment, the protection of intellectual property rights, and the provision of market access. The Administration is now in the process of completing a review of all current GSP benefits on the basis of the 1984 Congressional mandate. ECAT members believe a decision on whether to make further changes in the GSP system should await the results of the ongoing comprehensive review.

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The above constitute ECAT's principal recommendations for changes in U.S. trade laws. We welcome the opportunity to discuss them and any other trade issues with members of the Senate and their staffs.

Senator HEINZ. You indicated that if there was a unanimous finding of serious injury you could make a case for narrowing the President's discretion. Is that right?

Mr. PRATT. Yes.

Senator HEINZ. Now right now in a 201 case the U.S. International Trade Commission does not distinguish between serious injury and other forms of injury I don't believe. Is that correct?

Mr. PRATT. Well, I think in order to find—I assume the group had in mind that io order to grant relief they have to find that the problem is a substantial cause of damage to the applicant.

Senator HEINZ. So you are not suggesting a higher threshold of industry?

Mr. PRATT. I don't believe so. No, we were not.

Senator HEINZ. All right. That is the only thing I wanted to clarify.

Now you indicated that your group felt that the submission of an adjustment plan was a good idea.

Mr. PRATT. Yes, we do. That was in the spirit of the law from the beginning.

Senator HEINZ. If an industry were required to submit an adjustment plan, would that impose an additional burden on the industry, particularly if that plan represented an ineffective series of commitments from both labor and management that might have had to have been negotiated?

Mr. PRATT. Well, I think, yes, it would clearly be an additional burden. And I think whenever—I think the thing that probably concerns business most about this, I think the rationale that you should have an adjustment plan within the spirit that the law was intended would probably not be debated much by anybody.

I think the issue is, if you have to—if it gets into the law, with all the regulations involved, I think the normal businessman would immediately begin to get very concerned about gettiog into more bureaucratic overview which makes it more difficult for him to act in as free a way as possible to do what has to be done. I think there is always concern of agreeing to a provision which means that some plan has got to be approved by some group of people in government. That part of it is of concern. The idea of having to have a plan, that is why—excuse me.

Senator HEINZ. Could you actually realistically expect to get labor and management to reach agreement on an adjustment plan if they did not know what kind of relief they were going to get?

Mr. PRATT. Well, I am not sure I fully understand the question.

Senator HEINZ. Well, as I understand your proposal, and certainly as I understand S. 2099, which is the Roth bill, it basically requires an adjustment plan up front. And the question I have is: How can an industry agree to an adjustment plan that is conditioned on import relief without knowing what level of import relief is going to be recommended by the U.S. International Trade Commission or granted by the President? That seems to me to be putting a very large cart before a horse of unknown size.

Mr. PRATT. Well, your point is that you find the idea of requiring an adjustment relief therefore a difficult one. Is that the point?

Senator HEINZ. No. As a matter of fact, I have no problem with a process aimed at bringing everybody together. I favor it strongly.

But I don't think it should impose an additional burden. And it seems to me if an industry is going to go through that process, there should be a reward for coming up with a really substantive plan where maybe labor takes wage cuts and management defers, you know, gives back some salary, and shareholders come up with some additional capital. I mean, these are the kinds of things that Chrysler did to save itself and to get some money in the case of the Chrysler bailout bill.

If an industry is really going to go in for adjustment, it seems to me that there has to be something secure for them that they are going to get. Otherwise, they make all these concessions and it does not mean anything.

Mr. PRATT. Well, I would assume that that would be the case, that if an industry is making a proposal and asking for special relief from imports in return for which they would offer certain adjustment plans, then, of course, those plans would not go into effect if they don't get the relief. That is the point.

Senator HEINZ. Well, my time has expired. I guess my question is: Suppose they get half the relief the plan was premised on, what do they do, implement half the plan?

Mr. PRATT. Well, I think that would be a negotiated situation. I don't think there is any automatic answer to that.

Yes, I think if they offered—if they asked for a certain amount of relief and return for which they offered certain concessions, and they only got 10 percent, of course, they wouldn't plan to give you concessions. No, I wouldn't think so.

Senator HEINZ. All right.

Mr. PRATT. Absolutely not.

Senator HEINZ. Senator Baucus.

Senator BAUCUS. Mr. Pratt, I want to first thank you very much for coming forth with a compromise.

Mr. PRATT. I am sure all my compatriots in the business community may not thank me.

Senator BAUCUS. Well, it is a noble effort. It is a good faith effort. It is a first step and we all welcome it very, very much. Too often I think both sides have dug their heels in too far and I very much appreciate what you are attempting here.

Could you give us some examples of where adjustment plans have worked?

Mr. PRATT. Yes.

Well, I guess Bob mentions the Chrysler situation in a sense, which is probably—it was not related to a 201 action but it is certainly a case where specific requirements were laid on a company in return for which certain concessions were made to them, certain help was given to them.

You know, the business community has very mixed feelings about this. The business community, in general, voted almost unanimously against the Government helping Chrysler for the very good reason that—at least the reason they think is good—is the concern about having government more and more involved in the private sector. And yet it is hard to argue that that was a bad decision in retrospect.

Senator BAUCUS. So you are then saying that there are situations like the Chrysler situation——

Mr. **Pratt**. Yes, I believe so.

Senator **Baucus** [continuing]. Where it is proper for government to approve of certain conditions in order to grant certain relief?

Mr. **Pratt**. I believe so.

I think we have got to be very careful with it, but I guess Lockheed was another one before that, a special kind of a case, and there have been a few others.

We approach it with great trepadation for reasons I think are clear. But, in logic, it seems to me that there are times where it may be appropriate.

Senator **Baucus**. I have a question about your proposal to limit Presidential discretion where the ITC vote is unanimous.

Do you think that will really make any difference? It seems to me that if that were the law, one of the five Commissioners, particularly if he is recently appointed by the President, may not make it unanimous to let the President off the hook.

Mr. **Pratt**. I have tried to be frank with you on this. We are trying hard here. Our judgment is that in spite of the understandable questions that have been raised by members on the committee, that, on balance, the average businessman would feel the President ought to keep the discretion that he has.

In a situation where we face a strong feeling from Congress that some changes need to be made, we would try and be responsive to that. And that was the best compromise that we could think up that might make some help. And, no, I don't think it is a major change. But at least it says that if the case is so compelling—getting back to some of the debate that all the members voted unanimously for it—that that ought to put a higher level of charge of the President to try to be responsive to it. It is as simple as that.

No, I agree, it is not a major change. It might be helpful.

Senator **Baucus**. If I may ask one more question, Mr. Chairman.

Senator **Heinz**. By all means.

Senator **Baucus**. I was curious, Mr. Pratt, to hear your response to the basic point that Senators Danforth and Mitchell were making, and I also attempted to make, namely, what do we say to the shoe industry or others who go to the ITC with a legitimate complaint, that is, they have been substantially injured. Senator Mitchell pointed out that 77 percent of the shoes consumed in the United States are imports, an obvious injury. What do we say to those industries, which, under present construction of section 201, have no assurance whatsoever that they are going to be granted any relief, even though they have a meritorious claim?

Are you saying, as did Ambassador Yeutter, that that is just tough and that is the way section 201 works because the President should have umlimited discretion? I am curious as to what your position as a businissman would be.

Mr. **Pratt**. I think most businesses in America still resist the whole idea of Government bailout at all. Fortunately, they are the ones I guess who are not nailed to the wall. And I can understand the ones who are nailed to the wall have a different view of that.

All of us have applied, maybe not to 201—but not all of us—many of us have applied for one thing or another to the Government under similar kinds of rules. For example, antidumping rules, which are other rules where you can come in and prove damage under legal or other kinds of activity. We do not always win, even though we have a good case. What do they say to us? They say to us, well, we heard your case, and for various reasons we reject it.

And I don't think there is any simple answer to that. I think that, fortunately, there aren't too many of those cases. And in spite of that problem, I still come I think to the same conclusion that somebody has to make a judgment. The law doesn't, as it is established and the way it is set up, does not guarantee that you will get relief. It allows you to provide as the process goes through and steps are taken according to the law. That implies that judgments are going to be made.

There have not been too many of them, as has been pointed out, that came out that way. There was one that agitated everybody. I think that is. Yes, that is part of the game. There aren't many absolutes in the business world and most businessmen understand that. And we argue as best we can for what we think is a fair answer to our problems and we hope we win most of them. Nobody ever guaranteed we would win them all, even when we have a good case.

Senator BAUCUS. I understand that decisions have to be made and there are no guarantees. But what about the case where the ITC unanimously agreed that there is substantial injury, and then the President, for virtually any reason whatsoever, can say, well, tough luck?

Don't you think that that signals to most businessmen that the process does not work very well?

Mr. PRATT. Well, I think it would be, just from a simple, rational point of view, it would obviously be important to give as understandable a reason for that decision as possible. And it is not beyond the realm, believe me, of a businessman, even a harried one, to sometime understand that there is a higher—in fact, we have lived with this for years. Even very successful businesses have needed help from the U.S. Government abroad when we are dealing with difficult foreign Governments, and many times we have been turned down flat because in the interest of national security and international relations our cause was not as high as the higher. We don't like that, but most of the time we understand it.

Senator BAUCUS. All right. Thank you.

Senator HEINZ. Thank you very much, Mr. Pratt.

The Chair will observe we have 10 witnesses, and the Chair is going to have to leave at 12:15. So we have about 49 minutes, maybe 50 minutes, to do 10 witnesses. So it is going to be a little tight.

So, Mr. Pratt, thank you. I hope our next panel would please come forward. Amory Houghton, Howard Samuel, Vaughn Beals, Allan Mendelowitz, Don de Keiffer, and Bob McElwaine.

This panel of witnesses is no stranger either to the chairman or to most members of the committee. And I want to welcome you, and ask Amory Houghton to be our leadoff witness. Amo, it is good to see you; good luck in all things. Well, we hope that Howard is supporting you.

Mr. HOUGHTON. I hope he is too.

STATEMENT OF AMORY HOUGHTON, JR., FORMER CHAIRMAN OF THE BOARD, CORNING GLASS WORKS, AND COCHAIRMAN, LABOR INDUSTRY COALITION FOR INTERNATIONAL TRADE, CORNING, NY

Mr. HOUGHTON. Well, I want to thank you very much for letting me be here. I also thank you and Senator Baucus very much for your support of the labor industry coalition bill, S. 1356.

Senator, as far as the Senate bill, S. 1860, is concerned, it addresses the issue of targeting through the 201 provisions. And from my standpoint, in a word, this is inadequate to handle the issue because it makes it virtually impossible for businesses to get relief from export targeting.

Targeting, as we all know, is unfair and it pits Government against American companies and American workers. The American industry is strong, but no industry is strong enough to wage economic war against a foreign government.

Economic targeting, in a subtle way, is like missile targeting. It threatens the livelihood of this Nation bit by bit by bit.

It is a fact and not an opinion that foreign governments close markets, two-tier price, subsidize industries in a manner which condemns one industry in our country after another. The International Trade Commission has cataloged in three very large volumes the fact that Japan, Europe, and certain LDS's are doing this.

You may have heard the story of television: it is gone. When I started to work for the Corning Glass Works 34 years ago there were 35 customers. Today, there are three. Bit by bit by bit this industry dwindled and it is gone now because of the targeting which went on from the Far East.

To give you an example, in the old days, a 19-inch color television set made in Tokyo sold in the United States for $299.95. But the same set sold in Tokyo for over $1,000.

The industry is gone: it could not compete.

And the Japanese market was closed to U.S. televisions. In my 34 years with Corning, I think no more than 5,000 American television sets were sold in Japan. And the question is: How many minutes does it take to sell 5,000 Japanese television sets in this country?

We have another case, which is optical wave guides, the fiber, or the miracle fiber, which is revolutionizing telecommunications. This industry is threatened. It is being threatened because we cannot sell in Japan even for 25 percent of the price charged by Japanese producers in Japan. It is impossible. We haven't sold a single strand of fiber to the Government-controlled telephone monopoly in Japan.

Ceramics, fine ceramics, industrial ceramics are the next targeted industry.

Senator HEINZ. Mr. Houghton, I understand that you and Mr. Samuel are sharing a slot together. Are you ready to yield to him yet?

Mr. HOUGHTON. I will yield in any way that you would like me to.

Senator HEINZ. The Chair is going to have to be very strict on the time.

Mr. HOUGHTON. All right. Fine.

Can I just say one other thing? I don't think it is any secret that American industry needs a law that gives industry the assurance that if unfair action is taken, something specifically will be done about it, not just talked about. Thank you very much.

Senator HEINZ. Thank you, Mr. Houghton.

Mr. Samuel.

[The prepared written statements of Mr. Houghton and Mr. Samuel follow:]

STATEMENT OF

HOWARD D. SAMUEL
PRESIDENT
INDUSTRIAL UNION DEPARTMENT, AFL-CIO

AND

AMORY HOUGHTON, JR.
FORMER CHAIRMAN OF THE BOARD
CORNING GLASS WORKS

ON BEHALF OF
THE LABOR-INDUSTRY COALITION
FOR INTERNATIONAL TRADE

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE
COMMITTEE ON FINANCE
U.S. SENATE

ON

REFORMING U.S. TRADE LAWS

JULY 17, 1986

On behalf of the member organizations of LICIT I want to commend you, Mr. Chairman, and the other members of your subcommittee for undertaking these hearings on reforming U.S. trade laws. We hope that expeditious action by the International Trade Subcommittee can result in an effective and responsible trade bill that will enjoy wide, bipartisan support throughout the Congress and the country. The Trade Enhancement Act (S.1860) which has a majority of the Finance Committee as co-sponsors, provides a good basis for such a trade bill.

The work this subcommittee is undertaking is extremely important for our country. Our international trade position has been deteriorating for decades. The United States experienced a cumulative trade deficit approaching $350 billion over the past three years, resulting in the loss of more than 3 million jobs and hundreds of billions of dollars worth of domestic production.

Our greatest weakness has been an attitude that international trade is not important for our economic well-being. This attitude has been changing, due to trade's increasing influence in the lives of many Americans. But our policies toward trade have changed hardly at all. Our trade laws stand in great need of being updated to match the scale and nature of today's international realities.

America has to take international trade seriously. It makes a difference if American companies are kept out of other countries' markets when the firms of those other countries have access to our markets. It makes a difference if other countries subsidize specific activities to unfairly gain a position in world trade at the expense of American firms and workers. It makes a difference if we fail to help our industries modernize and adjust to new forms of international competition.

There is nothing permanent about comparative advantage. The world changes rapidly. New technologies, production processes and products -- as well as new government programs -- are constantly being introduced and improved upon. We cannot have a static, passive view toward world commerce. If we have a competitive advantage in one industry today, there is no assurance that it will not be lost. If we have a competitive disadvantage today, there is no law of economics that says the disadvantage is permanent. As a result, our trade policy must move from being reactive to being active. We need to help shape the world economy, not just respond to it.

LICIT strongly urges the Finance Committee to move ahead quickly with broad, generic trade legislation.

LICIT has long supported the cause of modernizing the laws and institutions of the United States that are concerned with the performance of our country in international trade. Our legislative efforts have focused on the Trade Law Modernization Act (S.1356), a bipartisan bill that was introduced by Senators Heinz and Baucus last year. In our statement today we would like to focus on four major components of that bill, especially as they relate to S. 1860.

EXPORT TARGETING

A crucial, and long neglected area of U.S. trade policy is predatory export targeting practices of foreign countries. From machine tools to fiber optics, semiconductors and computers, foreign countries have sought to unfairly promote the export expansion of their own industries at the expense of firms and workers in the world's largest and most open market -- the United States.

LICIT proposes that injurious export targeting be bought within the ambit of section 301. The focus of section 301 is designed to encourage a negotiated solution to trade disputes.

The LICIT proposal requires the USTR to take action if targeting has occurred and if injury is found, but the type of action that is taken is left to the discretion of the USTR. Such actions may include the retaliatory measures in current law. In addition, the USTR is given the option to negotiate an agreement with the offending country to end the injurious effects of the foreign practices, or the USTR can submit to the President proposed administrative actions, and if necessary, proposed legislation to implement any other government action which would restore or improve the international competitive position of the industry that has been injured or threatened with injury.

There are those who argue that the President already has authority to act to discourage or eliminate unfair export targeting practices. However, since under current law action is purely discretionary and has never been taken in response to injurious export targeting, clarification of Congressional intent is needed. This proposal clarifies the applicability of section 301 of the Trade Act of 1974 to such foreign practices when they result in material injury to U.S. firms and workers, and requires a response.

Another objection that has been raised with respect to provisions on targeting is that no international consensus exists on what constitutes targeting or on the extent to which it is prohibited by existing international agreements. This does not mean that the United States is therefore prohibited from taking action when such practices cause economic injury to American firms and workers. The reference to international agreements was specifically removed from the statute in 1974, as the Congress wished foreign countries to be on notice that the Executive had full powers to act, with or without GATT approval. Moreover, the Congress and the President recently enacted into law authority to act against export performance requirements which the USTR believes adversely effects U.S. economic interests (section 307 of the Trade and Act of 1984). This was enacted into law despite a GATT panel ruling that export requirements were not inconsistent with the GATT. The current proposal provides for termination or modification of actions taken, or payment of compensation, if the contracting parties to the GATT disapprove of any action taken under section 301.

The motivation for imposing an injury test for action against export targeting was that such practices by foreign governments should only be objectionable to the United States when they resulted in injury to American firms and workers. Indeed, this appears to be one of the main conclusions of a recent Report on Foreign Industrial Targeting submitted by the U.S. Trade Representative on July 15, 1985 to the Congress. In that report, the U.S. Trade Representative states that "because targeting is often unsuccessful, the appropriate policy response to it is to take offsetting action only if it has burdened, or is likely to burden U.S. commerce."

LICIT believes that the most serious deficiency in S. 1860 is the absence of effective provisions to deal with injurious export targeting. We urge the members of the Committee to remedy this situation when a bill is marked up.

INDUSTRY ADJUSTMENT AND SECTION 201

LICIT proposes that an optional track under section 201 be included in the Committee bill. The purpose of this optional track is to encourage an industry to use the escape clause to enhance competitiveness or otherwise adjust to new methods of competition, not just to receive temporary protection. The LICIT proposals are very similar to the provisions in S.1860, except that the USTR has discretion about whether to impose import relief, while S.1860 requires the

President to provide relief recommended by the ITC or substantially equivalent relief.

This new provision, at the petitioner's request, would authorize the formation of an advisory group under the auspices of the USTR. This group would be composed of firms and workers in the industry and designated government officials. The group would prepare an assessment of current problems and a strategy to enhance competitiveness. This strategy would set forth objectives, and specific steps which workers and firms could usefully undertake, to improve the ability of the industry to compete in the world market or to assist the industry to adjust otherwise to new methods of competition. The assessment and strategy would be made public. In addition, the members of the advisory group would make known to the USTR (and the Secretaries of Commerce and Labor and the International Trade Commission) what they intend to do individually to meet the objectives of the strategy. These submissions would be confidential.

The Commission and the USTR would have to take the assessment and strategy, as well as the confidential submissions, into account in deciding whether relief would be granted and the type of relief provided. If relief is provided, the USTR and Secretaries of Commerce and Labor would monitor the industry to see if it is responding as expected. If not, the USTR can alter or terminate the relief.

A red-herring objection has been raised with respect to these provisions on the basis that these proposals would supposedly convert section 201 into an industrial policy statute. This is not the case. The purpose of this amendment is to try to ensure that the original goal of GATT article XIX and section 201 of the 1974 Trade Act is fulfilled. That goal is to permit a more orderly adjustment to new competitive conditions by providing temporary import relief. By establishing a procedure whereby the firms and workers requesting the temporary import relief can make commitments to take steps that will either improve the ability of the industry to compete or to otherwise adjust to new methods of competition, the proposed changes would ensure that the provision of temporary relief will result in positive benefits for the country and protection of consumer interests. If the workers and firms in the industry do not carry through on their commitments, the relief can be modified or terminated. This is not industrial policy, but only an effort to make the current import relief laws work more effectively.

With respect to the injury standard, LICIT recommends that it be changed to conform to the GATT standard. The requirement that imports be a "substantial cause" of injury should be replaced with the requirement that imports be a "cause" of injury.

The requirement that the Commission determine whether imports are the "substantial" cause of injury means that it is much more difficult to obtain relief during an economic recession than it is during a period of robust economic growth. Moreover, the Commission has never developed any consistent methodology to weigh various causes of injury in order to determine if imports are the substantial cause of injury. Each Commissioner, therefore, makes an independent judgment, never based on consistent criteria or methodology, about the issue of "substantial" cause. The statute has not been consistently applied as a result. The automobile industry was denied relief in 1980 because the economic recession was determined to be the "substantial cause" of injury, not imports of cars. Yet in 1983, motorcycles were provided relief despite the fact that the recession in 1982 was the most severe in the post-war period. At the very least the statute should be clarified to indicate that a general economic recession cannot be given as a cause of injury that is greater than imports.

In addition, Mr. Chairman, we think it is vitally important, in today's increasingly interdependent world, that the ITC should take account of the trade-distorting policies of other countries in determining threat of injury under section 201. In many important industries such as automobiles or steel we confront a world where many or even all other major markets are closed by formal or informal import quotas. Producers in other countries are also likely to be supported in trade-sensitive industries by subsidies, export targeting programs, or other export-promoting practices which will increase the flow of exports seeking outlets in the U.S. market. America can no longer afford to simply ignore these increasingly widespread realities of international competition; they are unlikely to go away, and we can not wish them away. But if we continue to act as if they didn't exist, American workers and industry will suffer -- needlessly and unfairly.

ENHANCING THE AUTHORITY OF THE U.S. TRADE REPRESENTATIVE

The increased importance of world trade to the American economy has made clear the need for a strong and clear voice in the government representing U.S. trade interests. The status and effectiveness of our chief trade spokesperson -- the U.S. Trade Representative (USTR) -- needs to be improved. This can best be accomplished by giving the USTR greater authority to take action in the trade area. Specifically, LICIT proposes giving the USTR authority for the following trade actions that now formally reside with the President: Section 201, Section 301, Section 337 and the administration of the GSP program. In practice, this "Presidential" authority is now subject to varying degrees of influence by executive agencies attempting to impose the imprint of their own program responsibilities on the decision, to the detriment of implementation of the statute. The Trade Enhancement Act (S. 1860) transfers some, but not all, of this trade authority to the USTR.

Various agencies of the U.S. Government often have divergent interests in the implementation of any trade action. These interests may have nothing to do with the factual merits of the trade action itself. This is precisely the reason for the proposed transfer of authority to the USTR. Domestic political or diplomatic considerations should be the exception and not the rule in determining the outcome of actions pursued under U.S. trade laws. Because the President makes the final decision in many trade actions, these actions are seen as highly visible, political decisions.

We recognize that some Administration loyalists oppose this proposal as a lessening of Presidential authority. However, Presidential authority is not lessened. The USTR serves at the pleasure of the President, is a member of his Cabinet, and is answerable to the President for his actions. The LICIT proposal is designed to depoliticize the process as much as possible by not having the President himself be the one to take action against a foreign country. Foreign countries do object to Presidential action taken against their trade as a highly politicized matter. Another objective of the LICIT proposal is to increase the authority of the USTR as a decision-maker, as opposed to a Committee chairman. The USTR can still seek the advice of other agencies, but does not need approval of other Cabinet officers to act. Finally, the USTR's authority and bargaining leverage with trade ministers of other countries will be significantly strengthened.

Under the Constitution, the Congress has the authority to regulate international trade and the President's powers in this area are delegated by Congress. Current law does not give all authority on trade matters to the President. Authority to administer the antidumping and countervailing laws rests with the Secretary of Commerce. As a general rule U.S. dumping and subsidy laws are administered in a professional, matter-of-fact manner. Facts are determined and actions dictated by the law are carried out. Transferring authority to the USTR will not mean that domestic political or diplomatic considerations will never be considered. It will mean, however, that the economic facts set out in the statute will generally be the major basis for determination of most trade actions. It should be noted in this connection that as recently as last year, the President signed into law (section 307 of the Trade and Tariff Act of 1984) a provision giving the USTR the authority to act against export performance requirements under section 301 of the Trade Act of 1974.

NATURAL RESOURCE SUBSIDIES

A natural resource subsidy provision is necessary to discourage the growing use of two-tiered pricing arrangements and other below-market pricing structures by foreign governments. These policies subsidize domestic producers by providing them preferential or below-market rates for resource products. We strongly urge members of the Subcommittee to include a provision addressing the natural resource subsidy problem in the trade legislation that the Subcommittee will mark-up.

The natural resource legislation has wrongly been called protectionist by its opponents, who apparently believe that any legislation or trade action taken against imports -- even unfairly traded imports -- is protectionist. This kind of thinking, fortunately, is not expressed in the trade policy of the United States nor in the GATT. In fact, the protectionists are the foreign governments which subsidize and underwrite uneconomic investment, production and trade for their own purposes. Indeed, their protectionist policies discriminate in the use of capital and natural resources in favor of their own producers and to the detriment of privately-owned competitors in other countries. These governments have created artificial advantages for themselves; because these advantages are not based on market forces, these governments have no choice but to protect their policies from the discipline of the marketplace.

A natural resource subsidy provision would not penalize countries which possess abundant natural resources and want to use them to encourage economic development. If a country has a comparative advantage in the production of a particular natural resource because of an abundant supply of that resource, it will be able to export that resource because it can produce that resource at relatively lower cost than another product whose factors of production are relatively scarce. For example, a country may have abundant petroleum reserves but few well-trained electrical engineers. Such a country, according to the theory of comparative advantage, should specialize in producing and exporting oil and should import electronic components and equipment. By trading, that country will experience internal price changes compared to a situation of no trade. The domestic price of oil will rise because of increased demand from other countries and the domestic price of electronic components and equipment will fall because of increased import supply.

This is entirely different from the situation where a country prices its natural resources below world market prices for specific domestic industries in order to subsidize the industry that makes intensive use of the natural resource so that it becomes more competitive in export markets. We are no longer talking about comparative advantage but government intervention to lower absolute costs of a specific industry or sector through subsidization. For example, let's return to the country with abundant petroleum reserves. If the world price for oil is $20 a barrel, such a country can obtain $20 a barrel from exporting oil. If the country did not trade at all, the domestic price of oil would be much lower because of the abundant domestic supply with a much reduced demand from only domestic sources. Let us assume that without trade the domestic price of oil would be only $4 a barrel. It is obvious that it is advantageous for the country to trade because it can obtain $16 more per barrel through trading than from not trading. At the same time the domestic price of oil will have to rise to $20 a barrel or else profit maximizing oil producers would not sell to the domestic market as long as a higher price could be obtained by exporting.

Suppose that the government of this country, through whatever means, controls the production and pricing of oil. The government, recognizing the benefits of trade, continues to export oil at $20 a barrel. However, the government also wants to promote economic development and create a more internationally competitive domestic industry. It decides that it will do this, not through direct subsidization, but by providing oil to domestic industries at less than $20 a barrel. Thus it determines that domestic companies which wish to process oil into more refined products -- petrochemicals, plastics, etc. -- can obtain oil from the government at $5 a barrel. Since the government can obtain $20 a barrel from exporting the oil, and since the domestic companies would have to pay $20 a barrel for oil without the government's special pricing policy, the government is giving these companies a production subsidy equal to $15 for each barrel of oil they receive at the $5 a barrel price.

This practice has nothing to do with comparative advantage. It is direct government intervention to alter the competitive position of domestic firms vis-a-vis their foreign competitors. The natural resource subsidy provision is designed to counter such practices when they result in injury to American firms and workers.

With respect to legal issues, it has been suggested by some that the 1979 Subsidies Coed does not permit the imposition of duties against domestic subsidies "generally available" to producers in a foreign country. This is not true. The GATT Code on Subsidies and Countervailing Duties contains no such limitation on countervailing measures applied to domestic subsidies (Article 11 and Article 13, paragraph 4). The limitation pertaining to "generally available" is an administrative policy decision of the Department of Commerce. This policy is now under review by the Department under direction of the Court of International Trade. The "generally available" standard was developed by the Commerce Department to help it deal with countervailing duty cases concerning natural resource subsidies. However, such a concept does not exist in the GATT or in U.S. law. The U.S. statute does state that the domestic subsidies must be "provided or required by government action to a specific enterprise or industry, or group of enterprises or industries." The statutory language is concerned with the provision of a subsidy to a specific enterprise, industry, group of enterprises or group of industries. The statute is not concerned with an imprecise concept of generally available, but whether in fact specific segments of the economy are provided with a subsidy.

Mr. Chairman, that concludes our prepared remarks. We would be happy to answer any questions that you or other members of the Subcommittee might have.

STATEMENT OF HOWARD D. SAMUEL, PRESIDENT, INDUSTRIAL UNION DEPARTMENT, AFL-CIO, WASHINGTON, DC

Mr. SAMUEL. Thank you, Senator. I will respect your time limitations.

I just wanted to say a word about the industry adjustment section. We are all familiar with what the section proposes.

I would just like to point out that those who oppose it are putting us in kind of a catch-22 situation.

The idea of 201 is to allow our industries to take the necessary actions during a period of relief to make themselves competitive and to take whatever steps are necessary to adjust to the modern competitive situation.

This is what the adjustment section precisely does. It gives them that time, but also makes a demand upon them that they, in good faith, put forth such a proposal.

Those who oppose this, in effect, are saying that we want these industries to take good advantage of their relief but we don't want to know about it. This is not a good way for the Government to provide relief. The Government should be able to make some demands on industry. When as industry is provided with relief, they should carry out the adjustment proposal.

I also just want to say a word in favor of changing the injury standard, which is not on the bill at present. Mr. Pratt made a good point before, which I would endorse, that unless we do change the injury standard, 201 almost becomes nonfunctional during a time of recession. During a recession, in almost every case the recession is going to be the major source of economic harm for every industry—unless we make some change in our injury standard.

I would just like to say that I find myself, somewhat to my astonishment, in much agreement, and I think industry does as a whole, with the ECAT proposal put forward by Mr. Pratt.

Over the years, ECAT has become known as representing a group of industries which are importproof. Obviously, the spectrum of importproof industries is now considerably less, or perhaps there are no industries that are importproof any more. We now find that LICIT and ECAT are really not very far apart on most of these issues. There is a degree of unanimity which I would never have expected to find even a few years ago.

Senator HEINZ. Mr. Samuel, thank you and Mr. Houghton both.

Mr. Beals.

STATEMENT OF VAUGHN BEALS, CHAIRMAN OF THE BOARD, HARLEY-DAVIDSON, INC., MILWAUKEE, WI

Mr. BEALS. Mr. Chairman, one thing I am delighted to find is that there seems to be unanimity that my company, Harley-Davidson, is a success story for section 201. I think it is the only one I have heard today.

We think that the success story is because of the Trade Commission's basic understanding of our problem, and particularly the fact that they recognize the changing manufacturing interprise is a long-term process and gave us the full 5 years.

Second, we think that success is related to the fact that President Reagan, in our case, did in effect accept the ITC's proposal with only minor modification.

And, finally, obviously our employees' willingness to accept change and participate in many sacrifices was critical to that.

Our success, however, could have been greater and it could have been earlier if the Japanese had not found ways to evade much of the tariffs by what had been called tariff buster motorcycles or by onshore assembly of the imported components.

Based upon Harley's limited experience, I would like to suggest the following:

First and foremost, to keep any changes simple, because flexibility was paramount to us, flexibility to respond to competitive changes.

Second, is to distinguish between companies and industries. We were benefited by the facts that we were a one-company industry in fact. And we think that companies can change but it is very difficult for industries to change or to develop a plan for change in the aggregate other than the sum of the parts.

I think that the antitrust exemption might be helpful.

Third, we would, in the sense of keeping it simple, urge that the folks at the Trade Commission, who we found to have good judgment, use that judgment to determine whether the petitioner is really committed to change or whether it is superficial.

I think, frankly, an eyeball-to-eyeball meeting between their staffers and the petitioning companies will tell them a lot more than a 2-inch thick beautifully printed plan. And I share some of the prior stated concerns in that area.

Fourth, we believe it is important that there be a provision some place in the law for either the Trade Commission or the Trade Representative's office to respond to blantant evasion. I think the idea of a postpetition, or a posttariff study, is all right, but I think it would be far better to be able to take action so that that does not become a postmortem.

Finally, we think that maintaining the current section 201 position that you get one turn at this—that extensions are very difficult if not impossible to get—is a good atmosphere, so that the beneficiaries really recognize they get one chance and they had better do it right.

Even though we fully met, I think, all of the commitments we made to the Trade Commission and to the Trade Representative's office, we spent many hours and many dollars recently defending ourselves against the Japanese attempt to abort the tariffs under the required review.

We think it is much better to provide the relief in whatever form, step back and let it run. If some companies in that industry—if only a minority—succeed and really work at it, that is good. The ones that do not will die. That will strengthen the ones that survive.

Thank you.

[The prepared written statement of Mr. Beals follows:]

STATEMENT OF
VAUGHN L. BEALS
CHAIRMAN OF THE BOARD
AND
CHIEF EXECUTIVE OFFICER
HARLEY-DAVIDSON, INC.
BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE

JULY 17, 1986

TESTIMONY OF VAUGHN L. BEALS

My name is Vaughn L. Beals. I am Chairman of the Board and Chief Executive Officer of Harley-Davidson, Inc. As you may know, Harley-Davidson is a successful petitioner and a recipient of import relief under section 201 of the Trade Act of 1974. I am testifying today because I believe that our experience under section 201 would be helpful in your consideration of the proposed bills to amend section 201.

We at Harley believe that the relief has been very effective to date, and that the full benefits intended by the relief will be realized if the relief is continued for the full five years ordered by the President. The Office of the United States Trade Representative is currently conducting a review to assess Harley's adjustment efforts and to determine the effectiveness of the motorcycle import relief and whether relief should be continued for the full five years ordered by the President. We strongly maintain that the full five years is vital to Harley's completion of its adjustment program.

In my view, there are two principal reasons for our success: First, the President granted full relief -- which was the relief regime recommended by the ITC. Second, at the time Harley petitioned for relief, we had a comprehensive adjustment plan, which we have faithfully implemented during the relief period.

One disappointing aspect of our case is the fact that the Japanese have partially circumvented the relief by exporting to the U.S. "tariff busters" -- heavyweight motorcycles with engines displacement slightly less than the 700+ cc tariff cut-off. These tariff-busters were developed solely for the purpose of evading the relief. I would like to propose today an amendment to address this evasion problem.

I. BACKGROUND

At the time we filed our section 201 petition in September 1982, Harley-Davidson was faced with a critical competitive assault by Japanese manufacturers. The U.S. was flooded by massively increased imports, which led to grossly excessive inventories and radical price cuts. In response to our petition, the Commission determined in February 1983 that the domestic heavyweight motorcycle industry was threatened with serious injury from increasing imports. The Commission found that the major factors underlying the threat were a sixteen-month supply of imported heavyweight motorcycles and continued high levels of imports.

The Commission found that the Japanese imports to the U.S. continued to increase, even in periods when demand for heavyweight motorcycles declined. This increase in imports in complete disregard of market conditions led to an accumulation of an extraordinarily high level of inventories of imported heavyweight motorcycles in the United States. The Commission found that these large and growing inventories of imports had, and would continue to have, a depressing effect on the domestic industry.

Significantly, the Commission majority found no persuasive evidence that imports would decline in the near future absent relief. In reaching this conclusion, Chairman Eckes stressed the export-oriented nature of the Japanese motorcycle industry, which had exported approximately 91 percent of its heavyweight production in the prior year. He observed that while the Japanese manufacturers' decision to push export sales in the face of declining demand in the U.S. market helped them to maintain production and employment, it shifted the burden of adjustment to the United States.

Based on these factors, the Commission concluded that the threat of serious injury to the domestic industry was clear and immediate. As Chairman Eckes stated, the case presented "an unambiguous case for relief." Absent relief, Harley-Davidson would no longer be a viable domestic producer, and market disruption and losses would continue unabated.

To prevent the threat of serious injury, the Commission recommended a tariff increase of 45 percentage points during the first year, reduced to 35, 20, 15, and 10 percentage points in the second, third, fourth, and fifth years, respectively. Based on a review of the criteria set forth in section 202(c) of the Trade Act of 1974, the President imposed with one modification the relief recommended by the ITC. The President modified the relief by proclaiming a tariff-rate quota to allow continued access to the U.S. market for small volume producers that had not injured the U.S. industry. In order to be fair and consistent with the GATT, the President applied this modification to all countries, including Japan, and thus the higher tariffs have been applied to heavyweight motorcycle imports that exceed the quota amount for each country.

II. FULL RELIEF

One critical reason for the success of the relief in this case is that the President imposed the full relief recommended by the ITC, which was designed to eliminate the threat of injury presented by the Japanese importers and afford Harley the breathing space necessary to complete its adjustment program. The relief provided for significant tariff increases during the initial years that would be phased down during the five-year period so that (1) relief in the initial years would prevent further deterioration of market conditions and stabilize the market and (2) lower levels of relief during the remaining years would permit Harley-Davidson to bring its adjustment program into full operation and permit the industry to rebuild a solid base.

Then-Chairman Eckes explained the rationale for the relief:

> I am recommending that the proposed tariffs be imposed over a five-year period. During the first part of this period relief will operate to revalue prices of motorcycles in inventory and ensure the industry's competitive position in relation to that inventory. Also, the relief will restrain imports to acceptable, predictable levels. During the latter part of the relief period, the graduated tariff levels will provide a needed measure of protection as the domestic industry increasingly brings into full operation its adjustment program.

Heavyweight Motorcycles, and Engines and Power Train Subassemblies Therefor, Inv. No. TA-201-47, USITC Pub. 1342 (Feb. 1983) at 18. Chairman Eckes specifically provided that "the import relief will enable Harley-Davidson . . . to carry out an ambitious program to modernize plants and equipment as well as to improve its product lines." Id. Similarly, Commissioner Haggart stated:

> Although Harley-Davidson should benefit from improved economies of scale obtained from increased production and sales during the first three years of relief, a five year period is recommended in light of the fact that the condition created by inventories of imported motorcycles will not be completely offset during the first three years of relief. In order to ensure that Harley-Davidson is in a position to carry out its import adjustment programs, which are critical to its long term survival, I have recommended that the relief be for a period of five years with the tariff significantly reduced in the fourth and fifth years.

Id. at 53.

As the ITC recognized, without relief of this type, duration, and magnitude, the remedy would not have effectively redressed the threat of serious injury caused by the Japanese motorcycle manufacturers and would not have given Harley the breathing space necessary to adjust to import competition. The ITC rejected several other options -- such as quotas -- because they would not provide meaningful relief.

Because the ITC structured the relief properly and recommended very stringent relief for the first few years, the relief has been effective to date and has operated as it was intended. Our only qualification is that the relief has been diluted by the blatant evasion of the tariffs and the unfair pricing practices (dumping) by the Japanese producers.

First, the relief has prevented a further severe deterioration in market conditions, which would have threatened the survival of Harley-Davidson. As the Commission observed, if relief had not been provided and the Japanese were free to continue their importing practices, further deterioration in market conditions would have been inevitable.

Second, as a result of the relief, imports have decreased dramatically, inventories have been reduced significantly, and the market has become more stable. The high tariff rates during the past three years have had the effect of discouraging imports. As a result, the Japanese importers and their dealers have been encouraged to sell from existing inventory, inventories have been drawn down significantly, and the downward price pressure of the inventory has lessened.

Third, by providing a temporary respite from imports and restoring stability to the market, the relief has enabled Harley to continue to implement its comprehensive adjustment program. Through its innovative production management methods, product development and emphasis on quality, Harley has significantly lowered its costs, improved the quality, and thus increased its competitiveness with the Japanese motorcycle manufacturers. Substantial additional benefits will be realized over the next two years if the relief is continued.

Fourth, as a result of the relief and the fact that Harley-Davidson has been able to continue to implement its extensive competitiveness program, the Company has strengthened its position in the market during the three years since relief was provided. Harley has increased its market share, increased its competitiveness with Japanese models in terms of price and quality, broadened its participation in the heavyweight market, and improved its financial position.

The relief has accomplished these objectives while imposing only minimal costs on U.S. consumers. Price increases for both imported and domestically produced motorcycles have been moderate and have not been significantly greater than the rate of inflation. Moreover, any increase in prices that may have resulted from the relief has been more than offset by greater consumer choice and improved product quality made possible by the relief.

While we are pleased with the progress we have made under the relief regime to date, the full five years of relief -- as the President originally ordered -- are vital to the completion of our competitiveness program and to our ability to achieve the stautory goal of competitiveness in the long term in the absence of import restrictions. It takes considerable time from the conception of these programs to the realization of their full benefits. For example, while Harley has in place numerous adjustment measures that have already substantially reduced Harley's production costs, these programs will yield further cost savings in the future if they are permitted to run their course. Indeed, 1986 and 1987 are critical years, as the Company is expected to realize substantial additional savings in production costs. The Company also intends to introduce selective quality and cost reduction programs in the next two years in a further effort to attain its goal of cost and quality parity with the Japanese competition.

Based on our experience, I think it is important that the President grant relief that is substantial enough in magnitude and duration to redress the injury as well as facilitate adjustment. When structuring relief, the Administration should also take into account the fact that importers frequently succeed in partially evading the relief, which obviously reduces its effectiveness. For example, in our case, the Japanese motorcycle producers have taken every step possible to undermine the effectiveness of the relief. All four Japanese motorcycle manufacturers have evaded the relief by developing and exporting to the United States large and increasing quantities of "tariff busters" (heavyweight motorcycles that are virtually identical to motorcycles subject to the relief, except that the engines have been downsized just below the 700+ cc tariff cut-off). The sole reason the Japanese developed these "tariff busters" was for the purpose of evading the higher tariffs imposed by the President, as is evidenced by the fact that they are not sold in any country except the United States.

I believe that the best way to minimize and deter evasion of this type and therefore enhance the effectiveness of relief provided pursuant to section 201 is to amend the statute. Unfortunately, the current language of the statute appears to be too narrow to deal with this problem: the President is limited to providing relief only on those products found to have caused serious injury or a threat of serious injury. Thus, under the current statutory language, the President could not reach products that have been technically modified solely for the purpose of circumventing the relief.

I propose that the statute be amended as follows: (1) At the time the ITC is considering the type of remedy to recommend (in a case in which the ITC has made an affirmative injury finding), the petitioner may allege that there is potential for significant evasion of the remedies under consideration. The ITC would be required to make a finding on this allegation if the petitioner raises it. (2) If the ITC finds that there is potential for significant evasion, it must make a recommendation to the President on the actions to take to prevent such evasion. (3) In a case in which the President decides to impose relief and has received an ITC recommendation on evasion, he must address in the Presidential Proclamation the action he is taking to prevent evasion. (4) If after relief has been imposed the President determines that significant evasion has occurred, he may reopen the case and take any action he deems necessary to curb the evasion. I believe this type of amendment would increase the likelihood that the beneficiary of relief under section 201 receive the benefits intended by the ITC and President in granting the relief.

III. HARLEY'S ADJUSTMENT PROGRAM

In my view, the most important reason why Harley has been able to benefit from the relief is that we had a well-developed and comprehensive adjustment program at the time we petitioned for relief. This program encompassed the development of new products, improvements to the company's existing product line, upgrading of product quality, increasing productivity, and cost reductions. Let me emphasize that this competitiveness program was not a "last minute" effort. Rather, the program was already in its initial stages, and we were beginning to realize benefits from this program at the time the petition was filed. Ironically, huge levels of inventories of Japanese motorcycles and the prospect of increasing imports threatened to destroy the Company before it could benefit from the most significant gains of its adjustment program.

The breathing space afforded by the relief has enabled Harley to make substantial progress in implementing its adjustment program. I would like to mention just a few of our accomplishments.

Due to technological advances during the period of relief, we have been able to diversify our product line and offer redesigned motorcycles of greatly improved quality. Harley has incorporated a redesigned engine -- the evolution engine -- into all of its motorcycles. These new motorcycles have been enthusiastically received by dealers, retail customers, and the motorcycle press. Most significantly, this technology has enabled Harley to introduce - a motorcycle in the lower end of the heavyweight market.

Harley has dramatically lowered its costs and improved the quality of its products through improved manufacturing practices, greater employee involvement in the cost reduction efforts, and more flexible work rules. For example, Harley has improved employee productivity, reduced raw material and work-in-process inventory, reduced scrap and rework, and increased training.

In view of this experience, I believe that a well-conceived adjustment program is essential to achieving the adjustment objectives of section 201. Thus, I endorse S. 2099 and S. 1863 to the extent that they place greater emphasis on achieving the statutory goal of promoting adjustment of domestic industries to international competition and encourage petitioners to develop specific adjustment plans. I support the requirement that petitioners submit adjustment proposals and that the ITC evaluate the effectiveness of the adjustment proposals, as S. 2099 specifies.

However, I believe it is extremely difficult to enact very specific requirements for the purpose of facilitating greater adjustment without creating a bureaucratic nightmare. For this reason, I am pleased that in S.1863 the government's role in the development and implementation of adjustment programs is more limited than in other legislative proposals. Under S.1863, the individual companies, which are in a better position than the government to know what adjustment measures are realistic and likely to be effective, are still responsible for developing the speicifc actions they will take to promote adjustment.

S.1863 also appears to give individual companies some flexibility and discretion in implementing adjustment plans, which I support. As I know from Harley's experience, circumstances change between the development and implementation of the plan which often require modification of the plans originally developed. In fact, I have especially appreciated the fact that in our case USTR has understood that mid-course corrections may be necessary.

IV. CONCLUSION

Harley's experience confirms that the escape clause can be a valued and effective tool of trade policy if an effective remedy is provided and the petitioning industry has an intelligent adjustment plan. As a beneficiary of import relief under the escape clause, we are dedicated to vindicating the confidence of all those who supported our petition. Our hope is for Harley to become a model of how a U.S. industry can take advantage of temporary relief to recover and become fully competitive in world markets -- in a free and fair trade environment.

Senator HEINZ. Mr. Beals, thank you very much.

Mr. Mendelowitz.

STATEMENT OF DR. ALLAN MENDELOWITZ, SENIOR ASSOCIATE DIRECTOR, NATIONAL SECURITY AND INTERNATIONAL AFFAIRS, GENERAL ACCOUNTING OFFICE, WASHINGTON, DC

Mr. MENDELOWITZ. Thank you, Mr. Chairman.

We are pleased to be here this morning to discuss the work we undertook for this committee on how exchange rate movements influence the effectiveness of U.S. trade laws.

We found that exchange rate changes do not reduce the effectiveness of the antidumping and countervailing duty provisions. However, when an exchange rate appreciation impairs the ability of tariffs to protect industries that have obtained relief under the safeguard or escape clause provisions of section 201, it hinders efforts to achieve the law's objective of providing temporary relief to facilitate an industry's adjustment.

Quotas or other quantative restriction on imports will provide a level of protection that is not as directly affected by exchange rate changes. The greater certainty of quantitive restrictions in the face of exchange rate or other changes explains, in part, their frequent use in section 201 and quasi-safeguard actions.

Quantative restrictions do, however, impose considerable economic costs, and recognition of that fact has led to a proposal that they be auctioned to the highest bidder rather than allocated administratively.

The quota auction offers a number of benefits, including reducing distortions of trade patterns and allowing the Government to derive some revenue. Some proposals call for this revenue to be spent on a form of relief to assist industry to adjust.

Experience with auction quotas to administer safeguard actions has not been sufficiently extensive to assess whether potential benefits would be realized and whether there might be significant problems in using them. However, we believe that the potential advantages of auction quota rights, relative to the known disadvantages of allocated quotas and of tariffs under fluctuating exchange rates, warrant consideration.

We therefore propose experimenting with auctions in selected cases and evaluating the results in order to establish their effectiveness, administrative feasibility, and potential for wider application.

The Department of the Treasury, which has experience in auctioning Treasury bills and bonds, is the most likely candidate for conducting the experiment.

With respect to the agenda for the next round of multilateral trade negotiations, obviously safeguards are going to be on the agenda. We think that any efforts to reach a new safeguards code should include consideration of the potential uses and advantages of the auction quota.

Finally, with respect to the issue of adjustment plans under section 201, I must say that we are very pleased to see the serious consideration being given to adjustment plans.

Over 5 years ago, we issued a report on section 201 in which we recommended that adjustment plans be a mandatory part of the 201 process, so that the relief provided is not dissipated and that the public benefit in the form of genuine adjustment takes place.

This concludes my summary comments. If you have any questions later in the hearing we will be happy to try to answer them.

Senator LONG. Mr. Mendelowitz, thank you.

Don de Kieffer.

[The prepared written statement of Mr. Mendelowitz follows:]

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Statement of
Allan I. Mendelowitz
Senior Associate Director, National Security and
International Affairs Division
Before the
Subcommittee on International Trade
Senate Committee on Finance

on

The Impact of Exchange Rate Changes on U.S. Trade Laws and The GATT System

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here this morning to discuss how exchange rate movements influence the effectiveness of U.S. trade laws and how floating exchange rates affect the goals and principles of the international trading system. As you requested, we examined the compatibility of U.S. trade laws, specifically the antidumping and countervailing duty provisions of the Tariff Act of 1930, as amended, and section 201 of the Trade Act of 1974, as amended, and the rules of the international trading system with the floating exchange rate regime. We have reviewed the literature on this topic, discussed the issues with government and private sector experts, and analyzed selected trade cases to identify the consequences of exchange rate movements for trade law remedies. We will submit our final report after we have had the opportunity to fully consider comments on it by the agencies involved in administering the U.S. trade laws.

Exchange rates do have an impact on the effectiveness of tariffs in protecting domestic industries. If the dollar were to appreciate or grow in value relative to other currencies after imposition of a tariff, for example, the effective protection is diminished.

However, exchange rate changes do not reduce the effectiveness of the antidumping and countervailing duty provisions. Industries that petition for relief from dumped or subsidized imports could still be injured by exchange rate changes, but that same possibility exists for other industries that compete with fairly traded imports. The unique disadvantage that these industries face--the dumping or subsidy--remains offset by the imposed duty. Exchange rate changes do add a complication to the administration of the antidumping law, however.

On the other hand, when an exchange rate appreciation impairs the ability of tariffs to protect industries that have obtained relief under the safeguard or escape clause provisions of section 201, it hinders efforts to achieve the law's objectives of providing temporary relief to facilitate an industry's adjustment. Quotas or other quantitative restrictions on imports will provide a level of protection that is not as directly affected by exchange rate changes. The greater certainty of quantitative restrictions in the face of exchange rate or other changes explains in part their frequent use in section 201 and other safeguard actions. Quantitative restrictions do impose considerable economic costs, however, and recognition of that fact has led to proposals that they be auctioned to the highest bidder rather than allocated administratively. A quota auction offers a number of potential benefits, including reducing the distortions of trade patterns and allowing the government to derive at least some revenue. Some proposals call for this revenue to be spent on some form of aid to the industry granted relief to facilitate its adjustment.

Experience with auctioned quota rights to administer safeguard actions has not been sufficiently extensive to assess whether potential benefits would be realized or whether there might be significant problems in using them. Australia and New Zealand have used such auctions and have encountered administrative problems, but in our view their experience does not provide useful lessons for the United States because of the differences between the U.S. economy and regulatory system and those of Australia and New Zealand. We believe, however, that the potential advantages of auctioned quota rights, relative to the known disadvantages of allocated quotas and of tariffs and import duties under floating exchange rates, warrant consideration. We therefore propose experimenting with auctions in selected cases and evaluating the results, to establish their effectiveness, administrative feasibility, and potential for wider application. The Department of the Treasury should have primary responsibility for these auctions, since it has experience in auctioning government securities and since the auctions would be a source of government revenue. Treasury should coordinate its actions with other agencies involved in section 201 cases.

The agenda for the next round of multilateral trade negotiations is generally expected to include reconsideration of a code or agreement governing international use of safeguard actions to temporarily protect domestic industry from injury in order to facilitate adjustment. Efforts to draft a safeguards code failed during the Tokyo Round.

While quantitative restrictions offer the advantage of greater assurance of protection in safeguard actions, the General Agreement on Tariffs and Trade favors tariff protection, since it creates less trade distortion, is less burdensome, and is generally a less ambiguous or hidden form of protection. Efforts to negotiate an agreement governing international use of these safeguard actions will have to balance these competing interests. We propose that the U.S. Trade Representative explore the auction of import rights to administer quantitative restrictions in the safeguard code negotiations.

ANTIDUMPING AND COUNTERVAILING DUTIES

A major goal of U.S. trade law is to protect domestic industries from unfair import competition. If foreign firms receive subsidies enabling them to underprice their products in the United States, countervailing duties (CVDs) may be imposed to offset this unfair advantage. Similarly, foreign firms found to be dumping their products in the United States are subject to antidumping duties (ADDs). The antidumping and countervailing duty laws do not give U.S. firms absolute protection against foreign competition and were not intended to do so. Their design and scope limits them to offsetting the unfair foreign practice.

An exchange rate appreciation that occurs after a CVD or ADD is imposed may prevent a domestic industry from being competitive with imports. Relief provided by unfair trade laws can only restore the industry to the same position as other U.S. industries that are faced with fair import competition after exchange rates change. The dumping or subsidy margin that would have put the industry at an unfair disadvantage remains offset by the imposed duty.

Exchange rate movements can play a major role in determining whether an ADD or CVD will be imposed. For example, an appreciating dollar could be the major reason why a foreign firm can undersell domestic competitors. The International Trade Commission (ITC) has never rejected an industry petition on the grounds that exchange rate fluctuations are the source of injury rather than the foreign subsidy or dumping practice. The ITC, however, is divided on whether an ADD or CVD should be imposed when the injury attributable to a subsidy or dumping violation is negligible. Some commissioners argue that if a strong dollar allows a foreign firm to undersell a U.S. competitor by a much greater margin than attributable to subsidies or to dumping, imposing an import duty would do little to lessen the injury to the domestic industry. Other commissioners contend that such analysis oversteps the ITC's legal authority. They argue that the law requires that countervailing or antidumping duties be imposed if the subsidized or dumped imports are injuring the U.S. industry, even if the duties are imposed at trivial or de minimis rates and cannot, by themselves, end the injury to the domestic industry. (De minimis standards for less than fair value margins and net subsidy margins have been established by administrative practice at Commerce; this standard is presently set at 0.5 percent of selling price.)

Exchange rate variations can create significant procedural complications in dumping cases, because the calculated dumping margin could be significantly affected by the exchange rate used by Commerce in calculating the margin. In cases when the foreign nation has a high inflation rate or when the exchange rate between the dollar and the foreign currency is changing rapidly, for example, the date of the sale, which establishes the proper exchange rate, becomes more important than it would be if exchange rates were constant. Commerce has rules for handling these situations, but it still must rely heavily upon the expertise of its investigators in these cases. If Commerce determines that a dumping margin seems to exist only because of temporary exchange rate fluctuations, it may use the exchange rate from an earlier, more stable period to determine the dumping margin, if any. However, Commerce has used this regulation in only one case. (Melamine in Crystal Form from the Netherlands, 45 Fed. Reg. 29691 (1980).)

SECTION 201 RELIEF

Domestic industries that are seriously injured by imports can receive temporary relief from import competition under section 201 et seq. of the Trade Act of 1974, as amended. The question of whether the imports causing the injury are fairly or unfairly traded is not an issue in section 201 proceedings. Granting relief is an explicit Presidential decision that the nation's interests are best served by temporarily protecting a domestic industry from further injury from imports and allowing a period during which it may adjust to import competition by lowering production costs, transferring resources to alternative uses, or, in extreme cases, leaving the industry in an orderly manner. In these cases, an exchange rate appreciation could effectively nullify the program if tariff relief were granted. Exchange rate depreciation, such as the recent dollar depreciation, however, will have the effect of increasing the level of any tariff protection provided.

Current law does not specify the form of relief that should be granted under section 201. The ITC may recommend a tariff, quota, or other form of relief. The President may adopt the relief recommended by the ITC, substitute an alternative, or decide against granting any relief. Desirable goals of trade policy and GATT principles argue in favor of providing tariff relief rather than quantitative restrictions to protect an industry. Tariffs are preferred because they are considered to be the type of trade barrier that is least distorting to trade patterns and international prices and because their price effects generally are clearly visible while those of a quantitative restriction are less transparent. It is generally easier to hide the full extent of protection provided by a quantitative restriction.

In many cases where industries have been granted relief under section 201 or have received other protection after filing under section 201, however, an import quota or other quantitative restriction, such as a voluntary restraint agreement (VRA) or orderly marketing agreement, has been negotiated to limit imports into the United States. In recent years, the United States and other nations have frequently provided such temporary protection outside the formal channels of GATT Article XIX, which governs international use of safeguard actions. In the United States, the auto and steel industries have received such protection. Our September 23, 1985 report, Current Issues in U.S. Participation in the Multilateral Trading System (NSIAD-85-118), discusses safeguard actions. Unlike tariffs, these relief mechanisms provide a level of protection that is not directly affected by any subsequent exchange rate movements.

Quantitative restrictions that limit imports generally result in higher U.S. prices and higher foreign profits. The experience of the automobile VRA with Japan illustrates these consequences. Since 1981, Japan has limited its auto exports to the United States. By most independent analyses, the VRA has been effective in granting the domestic industry breathing room and in increasing employment in the industry. But the cost to the American consumer has been considerable. Studies have estimated that the price of an imported car was approximately $1,000 more than it would have been if the VRA had not been in place. Much of that price increase went to Japanese automakers and their U.S. dealers in the form of higher profits.[1]

The potential for foreign firms to receive substantial benefits from U.S. import relief to domestic industries and other problems with administered quotas has led to proposals to auction licenses granting the right to import products covered by quotas under section 201 or other safeguard actions. By auctioning quota rights rather than allocating them, the U.S. government, rather than foreign producers, would capture the excess profits created by the quota. Under some proposals, the auction revenues would be used to fund industrial adjustment plans. Auctioned quota rights, furthermore, might generate less distortion of price competition than allocated quotas. If the quota rights are regularly auctioned, the barriers to entering the U.S. market would be less than if the quota rights were allocated on the basis of historical production levels or market shares. As we noted earlier, however, there are potential administrative problems with auctions and there is a possibility that auctioning would be challenged as incompatible with U.S. obligations under GATT. This issue is not explicitly addressed in the GATT General Agreement or Agreement on Import Licensing Procedures, however, and some experts believe that auctioning quotas would fall within the bounds of permissible safeguard actions under GATT Article XIX.

The limited experience with auctioned import licenses does not provide an adequate basis for recommending their widespread use. However, their potential advantages in some situations relative to the known disadvantages of current measures are sufficient to warrant experimenting with them in selected cases and evaluating their effectiveness, administrative feasibility relative to other forms of relief, and potential for wider application. Products in which international trade is governed by specific agreements to which the United States is a party, such as the Multi-Fiber Arrangement, would likely be poor candidates as test cases. Ideally, import licenses would first be auctioned in safeguard actions covering imports from several competing foreign suppliers.

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[1] Robert Crandall, "Import Quotas and the Automobile Industry: The Costs of Protection," Brookings Review, Summer 1984; and ITC, A Review of Recent Developments in the U.S. Automobile Industry, Including an Assessment of the Japanese Voluntary Restraint Agreements, USITC Pub. 1648, Feb. 1985.

One other alternative advanced as a means to avoid the influence of exchange rate changes on relief without resorting to quotas is to index the tariffs imposed under section 201 for changes in exchange rates. Although this proposal would protect an industry from further injury, most observers regard this alternative as administratively problematic and that it would increase the uncertainty of international trade. If tariffs were indexed monthly, for instance, transactions might be pushed ahead at the end of a month if the indexed tariff would increase in the next month or delayed if the tariff would drop. Because tariffs imposed under section 201 typically apply to imports from several countries, another problem would be in selecting the appropriate indexing scheme. Having a different tariff for each country based on bilateral exchange rates might be challenged as a violation of the GATT principle of nondiscrimination, since an index based on bilateral rates would treat nations differently.

GATT PRINCIPLES AND FLOATING EXCHANGE RATES

Some observers question whether the current international trading system, based on the rules embodied in the GATT, can continue to serve U.S. interests as long as floating exchange rates influence trade patterns. They believe that floating exchange rates exacerbate other problems frequently seen in the trading system. Trade problems attributable to exchange rates, furthermore, have weakened support for the GATT system.

The central goal of the international trading system is to foster trade to enable all nations to benefit from access both to larger markets for their products and to goods and services produced in other nations. A central element in the strategy to accomplish this goal is to eliminate trade barriers that interfere with free trade. While trade barriers are artificial determinants of trading patterns, however, exchange rates are a fundamental determinant because they change the underlying cost and production advantages for specific products. Such movements underscore the limits of trade policy in determining trade patterns. The effects of trade policy instruments --U.S. trade laws and the GATT-- cannot outweigh the effects of overall U.S. economic policy that could cause a misaligned dollar or an economic recession. As recent experience with the strong dollar demonstrated, however, the trade effects of exchange rates can damage support for an open trading system.

Despite its inherent limitations, the GATT system has basic goals and features that serve U.S. interests equally as well under floating rates as they would under fixed rates. The basic goals of the international trading system's rules, which include limiting trade barriers and avoiding unwarranted government interference in international trade, are no less important. In addition, many GATT agreements (such as those that seek to limit the use of discriminatory product standards to restrict trade or that govern government procurement practices) and multilateral trade negotiations are no less valuable under floating exchange rates. Although the role of the GATT is limited in many trade disputes because nations are unwilling to agree to and adhere to international rules, countries also ignored these rules under fixed exchange rates.

One aspect of the GATT system that is sensitive to exchange rate movements, however, is the issue of safeguard or escape clause actions. Countries, including the United States, have not usually observed the rules of GATT Article XIX in protecting their industries from imports. Negotiations toward a safeguards agreement were not concluded during the Tokyo Round, but the issue is expected to be considered during the next round of negotiations.

As I indicated earlier in my comments on section 201, tariffs can be less effective in protecting industries than quantitative restrictions if the dollar strengthens. If current efforts to coordinate macroeconomic policies and intervention in foreign exchange markets are unsuccessful in reducing misalignments, the impetus for quantitative restrictions will increase and conflict with the GATT principles, which favor tariffs as the preferred form of relief, will continue. This conflict will exacerbate the difficulty of negotiating a safeguards code that remains consistent with the GATT goal of minimizing trade distortions. An auctioned quota might be a less disruptive way to protect industries than administratively allocated quotas in safeguard actions. We propose that the U.S. Trade Representative explore the auction of import rights to administer quantitative restrictions in the safeguard code negotiations.

This concludes my statement. I would be happy to respond to any questions that you may have at this time.

STATEMENT OF DONALD DE KIEFFER, PARTNER, PILLSBURY, MADISON, SUTRO, WASHINGTON, DC, ON BEHALF OF THE TRADE REFORM ACTION COALITION, ACCOMPANIED BY MR. STANLEY NEHMER, PRESIDENT, ECONOMIC CONSULTING SERVICES, INC., WASHINGTON, DC

Mr. DE KIEFFER. Thank you, Mr. Chairman.

I am accompanied today by Stan Nehmer, president of Economic Consulting Services. Mr. Nehmer and I have appeared several times before the ITC in escape clause cases. In addition, Mr. Nehmer is the author of a 1980 study prepared for the JEC regarding the escape clause. I served as general counsel to the Office of U.S. Trade Representative from 1981 to 1983.

Mr. Chairman, the promise of the escape clause has greatly exceeded its performance in the past 12 years. You have heard some different statistics today, but what do the real numbers show? In this period there have been 60 escape clause cases completed under the Trade Act. Presidents Ford, Carter, and Reagan actually provided import relief in 13 of those 60 cases. In not one single case was the import relief ultimately provided by the President the same as the import relief recommended by the ITC. And in all but one case—and we could split some hairs here—the import relief finally granted by the President was substantially or marginally less than that offered by the U.S. ITC.

The failure of the escape clause in this period, we believe, seriously contributed to the lack of public support, particularly in the last 2 or 3 years, for a liberal trade policy, which I think most Americans believe is a good policy.

There must therefore be an effective way to deal with exceptions into a liberal trade policy if the policy itself is to survive.

First, wide Presidential discretion to grant what he deems appropriate has doomed many cases, even though the ITC has found that imports were seriously injuring domestic industries.

Second, very few of the 13 so-called winners can be said to have received import relief that was truly affective; and I think you have mentioned today, Mr. Chairman, a couple of these exceptions.

In fact, Mr. Chairman, you put your finger very clearly on one of the major problems with the entire escape clause proceeding itself. It has less to do with the procedures at the U.S. International Trade Commission than it does once it reaches the White House.

The interagency process itself leads to the dilution of import relief down to the least common denominator when indeed any relief is recommended at all.

The TRAC, the group which I am representing today, has reviewed the escape clause provisions of S. 1860 as well as S. 2099. We believe that S. 1860 meets some of the problems faced by American industries and workers in securing import relief under the escape clause.

We further believe that S. 2099 would work in the opposite direction.

In my prepared testimony, I have outlined some of the recommendations that we would have with regard, in particular, to S. 1860.

We believe that some of the provisions in S. 2099 do not advance the cause of making the escape clause procedure more effective. It grants more and more options, to the administration—indeed, this or any other administration. We would certainly say that this administration has in the past 5 or 6 years given very good consideration to the cases that have come before it. But to the extent you increase the discretion by granting more options, those options indeed will be taken.

One point was made a moment ago about possibly granting some sort of antitrust relief. In many cases, certain industries will need to have the antitrust relief granted to them before they can even sit down and discuss any kind of plan that might be presented pursuant to either S. 1860 or S. 2099.

Therefore, you cannot make it part of an adjustment plan if you have to have antitrust relief before you can even discuss the adjustment plan.

Thank you very much, Mr. Chairman. I would be glad to answer any questions.

Senator HEINZ. Thank you, Mr. de Kieffer.

Mr. McElwaine.

[The prepared written statement of Mr. de Kieffer follows:]

STATEMENT OF TRADE REFORM ACTION COALITION TO SENATE FINANCE COMMITTEE ON PROPOSALS TO REFORM THE ESCAPE CLAUSE

July 17, 1986

My name is Donald E. de Kieffer. I am a partner in the law firm of Pillsbury, Madison & Sutro. I am here on behalf of the Trade Reform Action Coalition (TRAC). We appreciate this opportunity to present the views of TRAC on proposals to reform the escape clause. I am accompanied by Stanley Nehmer, President, Economic Consulting Services Inc. Both Mr. Nehmer and I have appeared several times before the International Trade Commission in escape clause cases. In addition, Mr. Nehmer is the author of a 1980 study prepared for the Joint Economic Committee on the workings of the escape clause. I served as General Counsel of the Office of the U.S. Trade Representative from 1981 to 1983.

The Trade Reform Action Coalition was organized in June 1983, as a single-issue coalition with the objective of comprehensive reform of U.S. trade laws. TRAC-related companies have annual sales of over $300 billion, employ more than 5 million workers and have plants or facilities in every state of the union. A list of the constituent members of TRAC is attached to my testimony. Needless to say, as with any coalition, not all organizations necessarily agree with every detail of a consensus statement.

I.

The promise of the escape clause has always greatly exceeded its performance. This was true before the Trade Act of 1974 overhauled this important provision of our trade statutes, and it certainly has been true over the last decade.

The ineffectiveness of the escape clause of the Trade Expansion Act of 1962 at a time when a rapid growth in imports led to a contraction in domestic production and employment resulted in growing criticism of the 1962 legislation and pressure to revise the escape clause procedure. When President Nixon sent his proposed trade bill to Congress in April 1973, he reflected on this weak performance of the existing escape clause procedures. He said:

> Damaging import surges, whatever their cause, should be a matter of great concern to our people and to our government. I believe we should have effective instruments readily available to help avoid serious injury from imports and give American industries and workers time to adjust to increased imports in an orderly way.

When President Ford signed the Trade Act of 1974 on January 3, 1975, he followed this theme:

> Under the Act, the Administration will provide relief for American industries suffering from increased imports and more effective adjustment assistance for workers, firms, and communities.
>
> The legislation allows us to act quickly and to effectively counter foreign import actions which unfairly place American labor and industry at a disadvantage in the world market.

What does the record show? There have been 60 escape clause cases completed under the Trade Act of 1974, as amended. Roughly half of the cases resulted in affirmative or split decisions by the International Trade Commission (ITC), meaning that the President had to make the final decision. Presidents Ford, Carter, and Reagan actually provided import relief in only 13 of the 60 cases, and in one of these cases the import relief was actually provided outside of escape clause procedures. In not a single case where import relief was provided, did the President in office at the time adopt the recommendation of the ITC in all respects. There is no question that the poor success record of escape clause cases has a chilling effect on the use of this procedure. At the present time no escape clause cases are pending before the ITC.

The need for an effective escape clause statute is greater today than ever before. Our trade deficit last year was a record $149 billion and is now expected to be at least as large this year. We have also lost some 900,000 jobs in manufacturing since 1980. We therefore require an effective means to combat injurious imports and promote adjustment. Indeed the failure of the escape clause, we believe, has seriously contributed to the lack of public support in this country for a liberal trade policy. There must be an effective way to deal with exceptions to a liberal trade policy if the policy itself is to survive.

This statute has encountered many problems in its implementation. First, the wide Presidential discretion to do what he deems appropriate has doomed many cases even though the ITC found that imports were seriously injuring the domestic industry. For example, two cases involving nonrubber footwear received unanimous findings of injury but Presidents Ford and Reagan rejected import relief. A case involving leather wearing apparel likewise received a unanimous finding of injury; it was rejected by President Carter.

Second, very few of the 13 winners can be said to have received import relief that was truly effective. A frequent approach of the Executive Branch has been to provide as little import relief as possible to avoid a political storm or possible Congressional reversal of Presidential action. The interagency process, which involves dissecting and debating the ITC's findings after the Commission has spent six months in detailed consideration of a petition, often leads to the dilution of import relief to the least common denominator. Indeed the interagency process makes every escape clause case effectively two cases.

Third, those who oppose the escape clause and, indeed, an affirmative finding of injury in specific cases, resort to the pejorative of the term "protectionist" to inhibit the delivery of effective import relief, or perhaps, any import relief, by the President. Yet the escape clause procedure is provided for by GATT in Article XIX and the U.S. is one of the very few countries that implements Article XIX with open, independent, and essentially transparent procedures.

II.

We are pleased that the Senate is addressing these concerns and we are grateful to those Senators who have cosponsored escape clause legislation. Unfortunately the legislation being considered by the Committee on the escape clause does not go far enough, in our judgment, to make the procedure as effective as it could be.

TRAC has reviewed the escape clause provisions of S. 1860 as well as S. 2099. We believe that S. 1860 meets some of the problems faced by American industries and workers in securing import relief under the escape clause. But some revisions in it need to be made to make the performance closer to promise under this statute.

We further believe that S. 2099 would work in the opposite direction and continue the poor record of delivering limited import relief to American industries seriously injured by imports.

III.

With regard to the escape clause provisions of S. 1860, we have several changes to recommend.

(1) Substantial Cause. We see no reason for the U.S. to continue to require that imports be a "substantial cause" as opposed to being a "cause" of serious injury. GATT Article XIX does not require "substantial cause" but merely "cause" when it says:

> 1. (a) If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession. (emphasis added)

(2) Definition of "Cause". The definition of the term "cause" should be clarified to permit domestic industries to obtain import relief if the injury inflicted by imports is significant even though the injury occurred during general economic recessions and even if other factors contributed significantly to the industry's injury.

(3) Phase Down of Import Relief. The provision that any import relief that is longer than three years in duration be phased down "to the extent feasible" has been construed by many ITC Commissioners to be mandatory rather than hortatory. To rectify this situation and to reflect the fact that an import relief program may not have effectively remedied the injury during three years, this provision should be stricken. Article XIX of GATT does not prescribe any time limit on import relief.

(4) Extension of Import Relief. If import relief is extended beyond its initial period, the extended relief may not exceed that which existed at the end of the initial period of import relief. This is unnecessarily restrictive were an industry can demonstrate that greater relief is justified. This could apply to those industries which may not have resumed their competitiveness by the end of the initial period of relief. Nor does Article XIX preclude increasing the level of import relief. This requirement, therefore, should be stricken.

(5) Increase in Level of Relief. As we all know, import relief programs provided by the President to remedy domestic industries' injury do not always accomplish their purpose. Frequently, this may result from the ineffectiveness of the relief program. The President should be given express authority to increase the level of relief if his initial effort proves ineffective to ensure the competitiveness of the recipient industry.

(6) Imports of Components. In evaluating the impact of injurious imports, the ITC should be permitted to include those entering the U.S. as components of other products. The result would be more economically valid assessments by the ITC of the full extent of the injury caused by imports.

(7) Additional Remedies. S. 1860 includes three additional remedies beyond those currently in the statute in section 203(a), namely government initiation of countervailing duty or antidumping duty cases, antitrust law exemption, and multilateral negotiations. If looked upon as alternatives to present forms of relief, these remedies could well dilute the likelihood of effective import relief. The government should initiate countervailing or dumping cases whenever the facts warrant it and should not be dependent on having an escape clause case pending before the President. The antitrust exemption is not import relief; at best it may help some industries become competitive in the long-term. Multilateral negotiations are similarly longer-term solutions in the absence of short-term leverage.

IV.

S. 2099 does not advance the cause of making the escape clause procedure more effective. It does not deal with the President's discretionary authority. It requires the submission of an adjustment proposal even if an industry was not a petitioner under the escape clause. It imposes burdens on the ITC that are not consistent with the expeditious consideration of import relief for an industry. It contains the three additional remedies that also appear in S. 1860 for which comments are made above. Above all, its tone is that of legislation to constrain action, not to promote relief and adjustment in meritorious cases.

V.

Perhaps the best summing up of the issue before us comes from the Senate Finance Committee itself. In its report on what became the Trade Act of 1974, the Committee said:

> With regard to the effect of relief on consumers the Committee feels that the goals of the Employment Act of 1946 should be paramount. Unemployed persons are not happy consumers. The Executive should not confuse the effect on consumers with the effect on importers or foreign producers; they are not the same. If the choice is between (1) allowing an industry to collapse and thereby creating greater unemployment, larger Federal or state unemployment compensation payments, reduce tax revenues, and all the other costs to the economy associated with high unemployment, or (2) temporarily protecting that industry from excessive imports at some marginal cost to the consumer, then the Committee feels that the President should adopt the latter course and protect the industry and the jobs associated with that industry.*

The thrust of that statement in the report of 1974 has yet to be fulfilled. This Committee has a golden opportunity now to realize the goals that it set in 1984.

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* Senate Finance Committee, Senate Report 93-1298, Trade Reform Act of 1974, November 26, 1974, p. 125.

STATEMENT OF ROBERT M. McELWAINE, PRESIDENT, AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATION, WASHINGTON, DC

Mr. McElwaine. Chairman Heinz and Senator Baucus, thank you for hearing the views of the Nation's 8,000 imported automobile dealers and their 200,000 American employees.

The proposed amendments to section 201 of the Trade Act are at the very heart of the controversy over trade policy since they deal with the issue of fairly traded goods and not with unfair trade practices as so much other of our trade law does.

In the final analysis, how the Congress treats goods that enter the U.S. market freely and fairly is going to determine whether America's posture in world markets is going to be bluntly protectionist or whether it is truly going to be aimed at opening markets and insuring the continued expansion of world trade that has been the cornerstone of the world prosperity in the whole postwar period will go on.

Seen in this light, title 3 of S. 1860, dealing with fairly traded goods—the escape clause—reveals that the basic thrust of this legislation is not to enhance exports as has been claimed, but either to reduce drastically or eliminate standards for arbitrarily barring imports, even when those imports have not been supported by any unfair trade practices.

In so doing, S. 1860, which has been heralded as a marketing opening measure, would ironically lead to severe reductions in U.S. exports, because of the obligation of the United States to compensate the affected nations for any reduction in exports brought about by action under the escape clause and the inevitable retaliation by our own trading partners. And I cite the recent Canadian shingle caper as a prime example of that.

In choosing among the bills before this committee, AIADA urges that the approach taken by Senators Roth, Wallop, and Durenberger in drafting S. 2099, be followed in preference to any other proposals regarding section 201.

This bill retains Presidential discretion to consider the national interest in the application of escape clause relief, an essential element if we are not going to shoot ourselves in the foot, by applying narrow prospectives to matters of great, broad, national, and international concern.

This is the key and essential difference between S. 2099 and S. 1860, and indeed between the Roth approach and virtually all other so-called reforms now before the Congress.

S. 2099 focuses on domestic industry adjustment in those cases where relief is granted. It sets an outside time limit for relief in any industry, affirming that escape clause relief is intended to provide transitional and not permanent protection for inefficient industries.

We endorse S. 2099 because it retains the fundamental concept that fairly traded goods should be restrained only under extraordinary circumstances and for a temporary period. Any other approach would transform our trade laws into a blunt instrument of protectionism to the serious detriment of the American and the world economy.

Thank you, Mr. Chairman.

[The prepared written statement of Mr. McElwaine follows:]

STATEMENT OF THE AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATION BEFORE THE SENATE FINANCE COMMITTEE

The American International Automobile Dealers Association (AIADA) represents the interests of 8,000 American automobile dealers and their more than 200,000 U.S. employees. We are pleased to have the opportunity to participate in this review of recent legislative proposals concerning Section 201 of the Trade Act of 1974. For the reasons outlined below, AIADA urges the Committee to stand firm in the face of protectionist schemes that would make the extraordinary relief under Section 201 for fairly traded imports too readily available.

Fair Versus Unfair Trade

Relief under U.S. trade laws is properly predicated upon the critical distinction between fair and unfair foreign trade practices. Achievement of the much sought after "level playing field" requires consistent opposition to unfair trade while keeping an open door to fairly traded imports. The need for a clear U.S. commitment to free and fair trade is particularly important today as the groundwork is being laid for the next round of multilateral trade negotiations. The United States initiated the preparatory process for these negotiations last fall and has taken an early lead in promoting an agenda which will result in increased trade liberalization. Any sign of U.S. reluctance to compete in an open trading system will undercut our efforts to persuade other nations to dismantle their trade barriers.

Pursuant to specific international standards, the United States already combats unfairly traded imports, primarily through antidumping and countervailing duty laws, Section 337 (for patent infringements and other unfair practices), and various customs fraud provisions. With respect to imports, these laws adequately cover the range of foreign governmental and corporate activity which can reasonably be described as "unfair". The United States also combats unfair foreign practices that curtail U.S. export sales, artificially affect trade flows or violate trade agreements. Section 301, as amended in 1984, enables the United States to retaliate effectively against unfair practices of foreign countries that hinder U.S. exports. The Reagan Administration has shown a willingness to rely heavily on this provision to combat foreign barriers to U.S. goods. AIADA believes in the vigilant enforcement of unfair trade laws.

Import relief for domestic industry is even available in the case of fairly traded imports. However, such relief is constrained by international standards which permit only limited responses in extraordinary circumstances. Under Article XIX of the GATT, countries are permitted in certain stipulated situations to "escape" temporarily from their multilateral and bilateral obligations to allow time for domestic industries adversely affected by fairly traded imports to adjust to changing market conditions. Such derogations of international obligations do not come without a cost; when import relief is provided for fairly traded imports, the United States is required under Article XIX (3) of the GATT to provide "compensation" to affected trading partners. The United States has taken considerable advantage of this special exemption for fairly traded imports. There are at least six different U.S. statutory responses to fairly traded foreign competition:

(1) the "escape clause", contained in Section 201 of the Trade Act of 1974;

(2) adjustment assistance to help firms, workers and communities harmed by the influx of imports;

(3) Section 22 of the Agricultural Adjustment Act, which is designed to deal with problems caused by agricultural imports;

(4) Section 406 of the Trade Act of 1974, which specifically addresses the issue of market disruption caused by nonmarket economies;

(5) Section 232 of the Trade Expansion Act of 1962, which is designed to limit imports which may impair national security; and

(6) import restraints on textiles permitted under the Multi-Fiber Arrangement (MFA) and the bilateral agreements negotiated by the United States pursuant to the MFA.

Section 201

Of these safeguards, the broadest-ranging and potentially most destructive to free trade is the escape clause mechanism found in Section 201 of the Trade Act of 1974. Section 201 provides for temporary relief against increased imports which are a substantial cause of serious injury or threatened serious injury to a particular domestic industry. Section 201 is the result of recognition that trade liberalization can result in difficult economic adjustment for particular sectors of the economy. Because relief is available when there is nothing "unfair" about the imports in questions, its use is properly limited to extraordinary circumstances where increased imports are an important cause of serious injury not less than any other cause and where temporary import relief will permit the domestic industry to adjust and will be in the overall national economic interest. As discussed above, use of Section 201 obligates the President to provide compensation in the form of "substantially equivalent concessions" to affected trading partners. There is also the risk when Section 201 is invoked that foreign countries will retaliate against U.S. exports.

Recently, several legislative proposals have surfaced which contain provisions that eliminate or handicap fairly-traded import competition in the American market by relaxing the standards which must be met for domestic industry to obtain relief under Section 201. H.R. 4800, the omnibus trade bill that passed the House on May 22, contains a number of such provisions. Several Senate bills, including S. 1863, S. 2099 and 2033 also contain Section 201 reforms. While these bills differ in approach, all but S. 2099 contain protectionist provisions which alter significantly the current distinction in U.S. trade policy between fair and unfair trade. Such a change in policy would be particularly dangerous because of the near certainty of foreign retaliation.

The basic premise behind these proposed relaxations of escape clause standards is that current law is not working. This perception ignores the recent history of Section 201. A review of the cases the ITC has decided during the Reagan Administration demonstrates that the Commission made the appropriate determination and that the Presidential discretion has been exercised, as it should be, with due regard to the general welfare of the nation. In the past five years, 12 cases have been decided under Section 201. In seven cases the ITC found that import competition was not a substantial cause of serious injury. In two of the five remaining cases, the President proposed significant restrictions on the imported goods, namely, large motorcycles and specialty steels. In a third case--carbon steel--he resolved the situation through the negotiation of voluntary restraints on steel imports.

In two instances, involving copper and footwear, the President rejected the ITC recommendations; the Administration found that imposing restrictions on copper imports would eliminate more U.S. jobs in fabricating than it would save in mining. The President decided against the ITC recommendation on footwear on the grounds that the recommended relief would increase consumer prices and risk retaliation by our trading partners without improving the competitive situation of the domestic industry. He cited an estimate from the Council of Economic Advisers that quota relief would cost the American consumer nearly $3 billion over five years to support job creation in the industry. He also noted that through direct retaliation or eventual "compensation" under the GATT, U.S. exporters would stand to lose approximately $2.1 billion.

AIADA was a major participant in the 1980 Section 201 automobile decision -- one of the most famous of recent escape clause cases. The action was brought by the Ford Motor Company and the United Auto Workers for relief from import competition from Japanese automobiles. AIADA participated in the long and arduous hearings and watched from an uncomfortably close position while the ITC wrestled with a complex factual situation and controversial political issue.

The ITC determination in that landmark case was eminently correct. The ITC had before it two unassailable facts: the U.S. automobile industry was facing severe economic difficulties, and Japanese automobile imports had increased significantly. The key issue, however, was whether Detroit's distress was due to imports or to other factors. After 46 hours of public testimony from 27 different groups over a week-long period, it was determined that increased imports were not a "substantial cause of serious injury" to the domestic industry, as defined under section 201. The economic conditions of the time and the change in consumer tastes to more fuel-efficient automobiles were found to be far more influential in causing the slump the Detroit automakers were experiencing. The automobile case was proof of the efficacy of the escape clause action and the wisdom of the architects of that law.

Proposed Changes in Section 201

As noted above, several recent legislative proposals, including S. 1863, S. 2099, S. 2033, and the House-passed bill (H.R. 4800) contain provisions which would alter the operation of Section 201. This section focuses on those proposed Section 201 reforms that AIADA considers particularly dangerous departures from the U.S. commitment to free and fair trade.

1. Transfer of Presidential Authority.

A number of proposals would substantially curtail presidential discretion in Section 201 cases. H.R. 4800, for instance, transfers the ultimate decision-making authority for imposing remedies and providing relief from the President to the Office of the U.S. Trade Representative (USTR). Robbing the President of his discretionary powers (which are already tempered by the possibility of a joint resolution of Congress and the imposition of the ITC's recommendation) would weaken an essential check on "escape clause" relief. Currently, Section 201 establishes a two-tier process in which the ITC acts as a fact-finder and the President acts as a policy-maker. In its fact-finding role, the Commission evaluates the economic condition of the domestic industry and the causal effect of increased imports. If the injury and causation tests are met, the ITC recommends adjustment assistance or global import restraints. Then, in his policy-making role, it is the President who evaluates whether the ITC recommendation is in the overall national interest.

Among other things, the President must take into account the efficiency of import controls in promoting industry adjustment, the cost to consumers, the likely retaliation by foreign trading partners, the economic and social costs involved, and the international economic and foreign policy interests of the United States. As a practical matter, these considerations under the current system are the subject of careful review and advice by the full economic cabinet. Were only one Executive branch office involved - in this case USTR - the benefit of this broad-ranging review would be lost. Finally, under our democratic system, it is preferable that critical trade policy decisions be made by the President, who is directly accountable to the people. By lodging final authority in the Trade Representative, there is a risk that U.S. trade policy would become overly responsive to the narrow interests of the international trade community, to the detriment of overall national interests. The architects of S. 1863 and S. 2033 have properly and wisely not included such a transfer of presidential authority.

2. Recessionary Conditions.

A disturbing proposal found in various proposals, including the House Ways & Means Trade Subcommittee "Discussion Draft" which preceded H.R. 4800, would significantly alter the Section 201 causal standard by ignoring recessions as a cause of injury. Current law requires that increased imports be "a substantial cause of serious injury or the threat thereof." Consistent with the underlying principle that relief from fairly-traded imports should be available only in extraordinary circumstances, "substantial" is defined as "a cause which is important and not less than any other cause." 19 USC § 2251(b)(4). Requiring the increased imports be an important cause not less than any other is critical to limiting escape clause relief to those instances where injury is truly a result of import penetration and not other factors, such as an economic slowdown or a change in consumer tastes.

Certain proposals have provided that there be a blanket exception in the Section 201 causal standard for a decline in demand due to general recessionary conditions. For instance, according to the House Ways and Means Discussion Draft, such recessionary conditions "may not be considered a cause more important than imports." This constitutes a major change in direction in escape clause theory. Implementation of this proposal would mean that even when the most important cause of a domestic industry's distress is a general economic slowdown, domestic industry could still obtain the extraordinary relief offered under Section 201.

Earlier this year the United Automobile Workers stated in hearings on the House side that, "[H]ad such a provision been in place in 1980, we could have won our [Section 201] case concerning automobiles at the ITC." As discussed above, the domestic industry loss in the 1980 case was the correct result: Section 201 relief should not be made available when factors other than imports are primarily responsible for injury to the domestic industry. That the ITC made the right decision in 1980 has been borne out by the fact that the combination of a general improvement in the U.S. economy and a shift among U.S. automakers to smaller cars has resulted in improved conditions for the domestic industry. In 1985 domestic vehicle sales reached nearly record numbers, trailing only the boom years of 1978, 1977 and 1973. Moreover, in the past three years, U.S. automakers have experienced profits which exceed those achieved in any previous 10-year period.

Proponents of this proposed change in the causation standard have alleged that it is necessary to enable domestic industries to receive relief during an economic slowdown. The weakness of this argument is apparent from a quick review of recent ITC actions. In 1984, the ITC recommended import relief for the copper industry, even though a major cause of the injury was the drop in demand resulting from recessionary conditions in 1974-75, 1979-80 and 1982. In a number of recent cases (Carbon and Certain Alloy Steel Products, 1984; Heavyweight Motorcycles, 1983; and Stainless Steel and Alloy Tool Steel, 1983), the ITC has found that the 1982 recession was in part responsible for injury and still recommended relief. This is entirely consistent with the letter and spirit of the escape clause. When increasing imports are a "substantial cause" of serious injury to a domestic industry, relief may be recommended even in periods of recession.

Inevitably, this proposed change would lead to widespread import restrictions during recessionary periods in the United States. The erection of such barriers to trade would be certain to decrease foreign trade, thus contributing to worldwide economic recession. Such would not be the road to U.S. economic recovery. Instead it would be a return to the kind of escalating protectionism which characterized the 1930's and ultimately placed the international trading system in danger of total collapse.

Changing the causal standard to ignore general recessionary conditions is not only bad trade policy; it is likely to be found a violation of GATT Article XIX. As outlined above, Article XIX restricts escape clause relief to those circumstances where a domestic industry is injured _because_ of increased imports.*/ Under these proposed reforms, a domestic industry could suffer injury chiefly from general economic conditions and still obtain relief. Indeed, _but for_ the general economic downturn, the domestic industry could be healthy. Imports, even if increasing, could not be considered the cause of the domestic industry's woes in such cases.

Finally, it must be remembered that even import restrictions imposed pursuant to a valid escape clause mechanism give rise to an obligation for compensation under the GATT. Thus, the United States would be obligated to provide substantially equivalent concessions to those foreign trading partners affected. Furthermore, it is almost certain that Section 201 relief would result in foreign retaliation. The proliferation of national barriers to free trade would be counterproductive at any time and precisely the wrong antidote to a global recession.

3. Industry Adjustment Plan.

Another disturbing departure from current law are proposals that attempt to make the granting of more likely relief under certain circumstances. H.R. 4800 provides that, upon the request of a petitioner, the USTR must appoint an "industry adjustment advisory group" consisting of representatives of labor, management, consumers, communities and appropriate Federal Government officials. This group would develop an industry adjustment plan setting forth an assessment of the problems facing the industry and a strategy for enhancing its long-term international competitiveness. If a plan is submitted to the ITC, and the ITC finds serious injury, it is required to take the plan into account in recommending the appropriate remedy for the injury and the USTR must take the plan into account in its decision whether to provide import relief. Moreover, the USTR may condition the provision of import relief on compliance with such parts of the plan as it deems appropriate.

Senate proposals, including S. 1863 and S. 2033, also provide petitioners the option of developing and submitting an adjustment plan to the ITC. However, under these Senate proposals, preparation of an adjustment plan can lead to a severe limitation of presidential discretion. If the petitioning domestic industry prepares an adjustment plan and the ITC approves the plan and finds serious injury or the threat thereof, the President is unable to exercise his sole discretion in denying relief. Instead, the President is required to either impose the ITC-recommended barriers or equivalent relief,*/ or submit a bill to Congress containing the actions he wishes to take. If legislation is submitted by the President and not enacted, the ITC-recommended relief goes into effect automatically.

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*/ Article XIX states that escape clause relief is available "If, ... any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury ..."

This provision of S. 1863, S. 2033 and other bills constitutes a major change in the fundamental premise under Section 201 that relief is always subject to Executive branch discretion. These Senate proposals would not only shift authority from the President to the USTR, but would also remove nearly all discretion from the Executive branch as a whole when the ITC found injury and approved an adjustment plan. As discussed above, the President plays a unique role as protector of the national interest. He alone reviews the significant broader domestic and international consequences of granting relief under Section 201. Circumvention of meaningful Executive branch review when an adjustment plan is approved by the ITC would constitute a considerable lessening of necessary safeguards currently built into Section 201.

Apart from its implication for Executive Branch discretion, the emphasis in these proposals on industrial adjustment plans is simply unnecessary. As a practical matter, both the ITC and the President currently consider the adjustment plans of the petitioning domestic industry in deciding whether to grant relief. In fact, the ITC is mandated by Section 201(b)(5) to "investigate and report on efforts made by firms and workers in the industry to compete more effectively with imports" and the President is specifically directed under Section 202(c)(3) to consider "the probable effectiveness of import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry concerned to adjust to import competition. . ." To specifically provide for an adjustment plan is thus unnecessary. Both the Commission and the President already solicit and receive such information from the domestic industry concerned.

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*/ The Executive branch does not even retain the discretion to determine the nature of the appropriate equivalent relief. For example, adjustment assistance and other less restrictive forms of relief would not be permitted if quotas or tariffs were recommended.

The major difference between current practice and that under the new proposals would be that currently such "plans" are just one of many considerations taken into account by the President. Other absolutely critical factors such as the impact on consumers, U.S. international economic interests and other social and economic concerns are also considered. By robbing the President of his discretion when a plan is accepted and injury is found, these factors would be disregarded.

The reliance on an adjustment plan also constitutes excessive governmental involvement in the economy. Like recent ill-fated proposals for an "industrial policy", representatives of labor, management, consumers, communities and government would prepare these industrial adjustment plans. Once the plan was approved by the ITC and mandatory relief was granted, it would then be necessary for the domestic industry to implement the government-approved plan to the satisfaction of an ITC-appointed governmental "plan implementation review committee" in order to continue to receive relief. Such an approach smacks of the kind of governmental intrusion in the economy that runs counter to the fundamental trust in free enterprise shared by most Americans.

4. Threat of Injury Standard.

In determining whether a threat of serious injury exists, the ITC must presently take into account several factors, including a decline in sales, a higher and growing inventory, and a downward trend in production, profits, wages, or employment in the domestic industry concerned. H.R. 4800 expands these factors by requiring the ITC also to consider: (1) a decrease in U.S. producers' market share; (2) the extent to which the U.S. market is a focal point for diversion of foreign exports; and (3) the inability of domestic industry to generate adequate capital to finance the modernization of domestic plants and equipment. Proposed Senate legislation, including S. 1863 and S. 2033, contains these first two factors (decline in market share and diversion of products) and adds several others, including consideration of foreign export targeting, the existence of affirmative antidumping or countervailing duty determinations, and the inability of domestic industry to raise money for research and development expenditures. S. 2099 adds other factors, including a foreign country's increase in production capacity that is likely to result in a significant increase in imports; any rapid increase in U.S. market penetration and the likelihood that it would increase to the level of serious injury; the probability that imports will enter at prices that would have a depressing effect on the domestic market; a foreign manufacturer's potential for product-shifting; and any other demonstrable adverse trends that indicate the probability that the importation will be the cause of serious injury.

These proposed expansions of the situations in which Section 201 relief is appropriate represent a significant departure from existing law. Pursuant to international standards, escape clause relief when there is merely a threat of serious injury is properly limited to extreme situations and current statutory standards are carefully crafted with those high standards in mind. When properly applied, the existing factors have proven sufficient to meet the threat of injury from imports.

Major Senate Bills: S. 1863 and S. 2099

In the Senate Finance Committee press release of June 24, 1986, it was requested that witnesses address specifically S. 1863 and S. 2099. As stated above, AIADA believes Section 201 has been largely successful in responding to fairly traded import pressures. There is no point in tinkering with a law that works. However, should the Committee chose to endorse a modification of Section 201, AIADA urges that the approach taken by S. 2099 be followed over all other major Section 201 proposals.

Perhaps most importantly, S. 2099 does not alter the current statutory framework concerning presidential discretion. S. 1863, as discussed above, would substitute the relatively narrow perspective of the ITC for the broader view of the President when injury was found and an adjustment plan approved. Unlike S. 1863, S. 2099 retains full presidential authority. This is a key difference not only between S. 2099 and S. 1863, but between S. 2099 and virtually all other proposed reforms.

At the same time, S. 2099 properly focuses on domestic industry adjustment in those cases where relief is granted. By requiring petitioning industries to develop an adjustment plan and giving the President authority to terminate or modify relief if commitments are not met, S. 2099 encourages difficult industry transitions. S. 2099 also sets an outside time limit for relief for any industry, thereby making it clear that Section 201 is intended to provide temporary import protection and not permanent protection for inefficient industries. This will put additional pressure on firms to adjust and it will limit the costs that the rest of society must bear when protection is provided to a particular industry.

S. 2099 would also permit industries to petition the Attorney General and the Secretary of Commerce for anti-trust law exemption. While AIADA does not endorse this proposal, the fact that the option remains at the discretion of the Executive Branch makes it far less troublesome. It is hoped that the President would use this option in a manner that would not provoke our trading partners.

As explained above, S. 2099 and S. 1863 also provide additional factors for the ITC to consider in threat of injury determinations. While AIADA continues to believe that the expansion of these statutory requirements is unjustifiable in the context of a Section 201 proceeding, as a practical matter many of these factors are already considered by the ITC in its evaluation of a petition alleging threat of injury.

In sum, S. 2099 retains the fundamental approach of Section 201, *i.e.*, that fairly traded goods should be restrained only under extraordinary circumstances and for a temporary period. S. 1863, on the other hand, has the potential of opening the door to escape clause relief, thereby forcing the United States to compensate affected trading partners and risking outright retaliation. S. 1860, the omnibus trade bill of which S. 1863 is a part, has been heralded as an export enhancement measure. Ironically, its Section 201 provisions could well lead to significant contraction of exports due to foreign retaliation.

Conclusion

Each of the proposed changes to Section 201 would alter a delicate balance which is the result of years of experience, clear international standards and U.S. self-interest. Adoption of the more protectionist proposals -- including the reduction of presidential discretion found in S. 1863 -- would risk transforming Section 201 into a blunt instrument of protectionism and curtailing U.S. exports. Any changes should be minor, focused on encouraging expeditious U.S. adjustment rather than providing protection from fair trade. The real answers to perceived international trade problems are not to be found in Section 201 reform, but in vigilant enforcement of our unfair trade laws, trade adjustment assistance in appropriate circumstances, and efforts to enhance U.S. competitiveness and increase exports. AIADA urges the Senate Finance Committee to reject proposed Section 201 reforms that place the United States in a protectionist stance at the precise time when the Americain commitment to free and fair trade is paramount.

Senator HEINZ. Mr. McElwaine, thank you.

Mr. Samuel and Mr. Houghton, if an industry is prepared to really make a commitment to adjustment, sat down with its labor people and negotiated some really tough changes in work practices and sat down with other people—suppliers—and did some difficult things—and I cite Chrysler as an example, which was brought about because the Congress was determined that something be done—but as you go through all of that, what is wrong with requiring the President, as his quid pro quo, to grant import relief even if that import relief is not exactly what the ITC has recommended, as long as it is substantially equivalent. Is there anything wrong with that?

Mr. SAMUEL. Senator, I am sorry. I missed a couple of sentences of what you said.

Senator HEINZ. If an industry makes the kind of tough far-reaching commitment to an adjustment plan, is there anything wrong? Is there something wrong with requiring the President to implement what is substantially equivalent to or the same as the relief recommended by the International Trade Commission?

Mr. SAMUEL. It seems to me, Senator, that the adjustment program is one which is negotiated between the private sector, labor and business, and the Government. But obviously if an agreement is reached, then it seems to me that all parties are obliged to fulfill their part of the arrangement, which would include the Government.

Senator HEINZ. Mr. Beals, you are a success story. Do you believe that it is appropriate to require the President to implement import relief if an adjustment plan has been agreed to?

Mr. BEALS. I would be concerned if it becomes a mechanical process because I think there is value to consideration of the other elements of national policy, consumer effects, those things that the Trade Commission does not.

Senator HEINZ. So you think the President should still have some discretion to eliminate the import relief——

Mr. BEALS. Yes; I do.

Senator HEINZ [continuing]. Notwithstanding what the industry has done, or says it could do if relief were granted?

Mr. BEALS. Yes. I think some discretion is certainly necessary considering the parameters that are not balanced by the Trade Commission.

Senator HEINZ. Now, you described technology and greater efficiency as elements of your adjustment during the 201 relief period. Why didn't you undertake those measures prior to your 201 petition?

Mr. BEALS. We did, in fact. We started them well in advance of the 201 petition. Our problem was they take considerable time to implement. And we were not going to be able to complete them before we were dead under the trade environment that existed in 1982.

Senator HEINZ. Thank you.

Senator Baucus?

Senator BAUCUS. Do you think that, though there should be some flexibility, the principle is a good one; that is, that assistance can and often should be conditioned upon certain adjustment plans?

Mr. **Beals**. Yes. I would certainly think that the Trade Commission should establish for their satisfaction that the industry, but really the individual companies in that industry are serious about adapting to the competition.

If, in the aggregate, all the members of industry do not appear in the Trade Commission's judgment to be serious, then I don't think they deserve help.

Senator **Baucus**. I would like the panel's response to a point that has been briefly discussed here, auction quotas.

I am curious to know what the panelists' views are on auction quotas.

STATEMENT OF STANLEY NEHMER, PRESIDENT, ECONOMIC CONSULTING SERVICES, INC., WASHINGTON, DC

Mr. **Nehmer**. I am Stanley Nehmer.

I think that we have been tossing around the concept of auctioning of quotas a bit too blightly. I don't think that the people who were recommending the auctioning of quotas really have thought out the question of the issues that are involved: Who can bid for the quotas? What are the limits? Is there going to be a maximum price, a minimum price? These are more to a whole raft of what may be considered to be administrative problems, but really involve policy probems in terms of U.S. Government policy.

And I think until those have been really thought out by some group in a recommended package, I think it would be premature to endorse the auctioning of import quotas.

Senator **Baucus**. Mr. de Kieffer, do you have a view?

Mr. **de Kieffer**. I agree.

Senator **Baucus**. All right.

Mr. **Mendelowitz**. I think that it is suggesting that we haven't thought out all these issues without being aware of the full extent of our work, is, I think, a rather loose criticism to make.

All of the comments you raised were considered by us in the course of our review, and a very large number of additional potential problems and issues and were specifically because of the large number of potential problems and issues that we called for the experimentation with auction quotas in selected cases, and the valuation of how they work, to determine whether they in fact can be administered, whether they were effective and whether they were unforeseen problems with them.

So I would say that we made a very sober and very carefully developed proposal.

Senator **Baucus**. Mr. Houghton, do you have a view?

Mr. **Houghton**. Senator, the Labor Industry Coalition for International Trade has not taken a position on this and I am no great expert on it. But I suppose in general I could make just a couple of comments.

First of all, it does make sense. It probably is difficult to administer. And if we go down this path, we ought to go down it cautiously.

Senator **Baucus**. All right. Mr. Samuel.

Mr. **Samuel**. Let me associate myself with Mr. Houghton. LICIT has not taken a position, but I think he made the correct response.

Senator BAUCUS. All right.

Mr. McElwaine.

Mr. McELWAINE. First of all, Senator, we consider quotas to be the least efficient, the most expensive, the most regressive form of trade restraints available. And we have endured 5 years now of quotas on imported automobiles coming into the United States which are costing the American public about $5 billion a year at the present point. And we have restored some few jobs in the domestic auto industry with them, but at a cost to the consumer of around $200,000 a year per job.

So quotas, we feel, are inherently inefficient. Auction quotas may be even more so simply because the wealthiest firms, according to our understanding of how these things would operate, would simply get the most quotas.

In our particular indusry, if the Japanese quotas were being auctioned we would have to assume that Toyota and Nissan would wind up with the lion's share of all the quotas and the poorer firms with less capital to work with would wind up frozen out of the market.

Senator BAUCUS. I understand that. Nevertheless there could be conditions under which quotas are auctioned off that would take that into consideration.

Mr. McELWAINE. Absolutely.

Senator BAUCUS. Yes.

I see my time is up. Thank you.

Senator HEINZ. I have got a question I guess for Don de Kieffer and Amo Houghton or Howard Samuel, which is this: In light of your support for the mandatory relief provisions in S. 1860 or S. 1863 if you would prefer, do you believe that every industry that comes up with an agreed upon adjustment plan should get the recommended U.S. ITC relief irrespective of whether it might pose enormous cost on consumers, raise the significant national security risk, or injure because of compensation claims, other domestic industries?

Mr. DE KIEFFER. You have asked me a two-part question. First, I think that, as I mentioned before, in putting together in relief packages or an adjustment package——

Senator HEINZ. Don, I am sorry. I really cannot hear you.

Mr. DE KIEFFER. In putting together an adjustment package, Mr. Chairman, I think it is essential that the committee recognize that in certain circumstances it will be necessary to grant other forms of relief in advance even of that, including the antitrust relief, particularly if part of this adjustment package might include rationalization plans.

Second, with regard to the question particularly the way you phrased it, no, I don't think anybody believes that the ITC's decision under any circumstances must go forward in exactly the terms in which they phrased it.

Surely, the President must be able to consider some other factors. That is not what we are talking about here. We are not talking about taking away all the President's discretion. Everybody on this panel has agreed—that the President should be able to retain some discretion. The other end of that is the result of using that discretion should not be to deny help to an industry that has very clearly demonstrated that it has been injured by import competition.

One thing that started out today was the distinction that was apparently made between fair and unfair competition. Surely, we are not talking about antidumping or countervailing duties here. But the conclusion that all 201 cases involve only fair trade is simply not warranted. It is just not true. Because the two types—or, effectively three types—of unfair trade laws do not contemplate all the other types of unfair competition that can exist. Mr. Houghton mentioned that a moment ago himself.

Senator HEINZ. How would you characterize the Presidential discretion that is preserved via the adjustment route under 201 as in S. 1860? Does the President have the kind of discretion you just described?

Mr. DE KIEFFER. I think that by and large the President would not be nearly as uncomfortable in practice with S. 1860 as some witnesses have led you to believe. You are not asking the President to give up everything. I think that there might be some compromises made, but S. 1860, by itself, does not rob the President of discretion across the board.

Senator HEINZ. Thank you.

In the interest of time, I am going to discontinue my questioning. My time is about to expire anyway.

Gentlemen, thank you all very much. You have been extremely helpful. We thank you, and I have some questions for a number of you I will submit for written responses. Thank you. I want to submit to Amory Houghton or Howard Samuel a question from Senator Mitchell for a written response as well.

[The question and answer follows:]

LABOR-INDUSTRY COALITION FOR INTERNATIONAL TRADE

RESPONSE FOR THE SENATE FINANCE COMMITTEE HEARING RECORD FROM AMORY HOUGHTON, JR. AND HOWARD SAMUEL, CO-CHAIRS OF THE LABOR-INDUSTRY COALITION FOR INTERNATIONAL TRADE (LICIT)

SENATOR MITCHELL'S QUESTION:
Section 201 of the Trade Act of 1974 is intended to provide temporary relief for firms or industries facing serious injury from dramatically increasing imports in order to enable them to adjust to foreign competition. As it is now constituted, does Section 201 adequately perform this mandate?

RESPONSE:
Section 201 in its present form fails to promote adequately its ostensible goal of facilitating adjustment to increased import competition. It lacks an effective procedure whereby the parties involved can reach agreement on an adjustment strategy tailored to a particular level of temporary import relief.

In its Report to the Congress in 1981 on the administration of Section 201, the General Accounting Office (GAO) pointed out that the petitions reviewed either lacked adjustment proposals or contained only vague generalizations. We believe that this deficiency is owing in part to the great uncertainty petitioners for import relief face, both as to whether relief will be granted if the ITC finds serious injury and if so, at what level and in what form. Furthermore, petitioners at present lack a legally sanctioned means of consulting together in order to reach agreement on specific actions the industry can and should take in order to restore its competitiveness by the end of the relief period.

The company and union members of our coalition discussed these problems during a two year period, reaching a consensus that is embodied in the proposed amendments to Section 201 contained in S. 1356 and H.R. 4800. We believe that petitioners who are broadly representative of firms and workers in the industry should have the option of petitioning the Trade Representative to establish an industry adjustment strategy committee for the purpose of preparing an adjustment plan. Further, we support authorizing the USTR to request both firms and unions to make individual confidential submissions on a voluntary basis, outlining the concrete steps they will take to implement the adjustment plan if the appropriate relief is granted. We believe that this procedure would ensure that:

(1) import relief enables the industry to generate enough capital to invest in modernization and R&D; (2) the relief period is used to carry out the stated purposes; and (3) consumer and national interests are protected.

However, none of these goals would be achievable in the absence of effective implementation of import relief when appropriate. We urge that the authority to make the final decision on whether to grant relief and in what form be transferred from the President to the Trade Representative, so that US long-term trade and industrial interests are given their due weight against other considerations. Moreover, some members of our coalition have suffered from ineffective administration of import relief under Orderly Marketing Agreements, as documented in the GAO report. During the ostensible relief period, imports actually surged from countries not originally covered by quotas, and USTR failed to take timely remedial action. Thus, neither the level nor the duration of the relief originally contemplated has been actually implemented in some cases. It should therefore not be surprising that the industries at risk were unable to restore their competitiveness, and returned to the ITC with another petition for relief.

Senator HEINZ. Our next panel is Mr. Frank McCarthy, Mary Melrose, George Yuribe, and Jeff Bialos.

Mr. McCarthy, you are at the top of the list. Please proceed.

STATEMENT OF FRANK E. McCARTHY, EXECUTIVE VICE PRESIDENT, NATIONAL AUTOMOBILE DEALERS ASSOCIATION, McLEAN, VA

Mr. McCARTHY. Thank you very much, Mr. Chairman.

My name is Frank McCarthy, and with me is Tom Green, executive director of legislative offices, and we represent the National Automobile Dealers Association. We have over 20,000 members who actually represent over 35,000 new car franchises, about half domestic and about half import.

Our domestic dealers are as concerned about this legislation as our import dealers. Because anything that would result in quotas or tariffs unnecessarily would raise the price of cars and affect their business adversely as well as it would our import dealers who feel very strong about this.

In S. 1860, NADA does support provisions granting the President authority to participate in a new round of multilateral trade negotiations. It would also favor the provisions in S. 1860, such as measures removing disincentives to American exports and some of the improvements in the unfair trade practice procedures.

On the other hand, we must state very strongly that we are very concerned about some of the proposed changes in section 201 because they would have a direct impact on our members. We believe section 201 is the most likely trade remedy procedure that would be used for imposing tariffs or import quotas on motor vehicles.

We start off first with the one that is of greatest concern to us. We strongly oppose the several proposed changes to section 201, especially the one that would require that the mandatory relief provision eliminate the consideration in section 201 cases of fundamental U.S. interest which has been spelled out here this morning on many occasions.

This is of great concern to us. Even if the International Trade Commission were unanimous, that would not satisfy us because that would simply mean the ITC is unanimous that a specific industry needs help. It does not say that the fundamental U.S. interest has been taken into consideration.

The mandatory relief provision would prevent the President from doing this. We think this is a grave danger.

Also, we point out, as others have, that section 201 is a remedy against fairly traded goods and should only be invoked when it is absolutely most necessary.

We also point out, that in the temporary relief section, that even under the present rules of the International Trade Commission relief is granted within 8½ months.

The provisional relief and critical circumstances where the President must impose temporary relief we think is very bad because it almost prejudges a case on the part of the President before the ITC has heard the case and before it has been presented to him. We think this is quite a dangerous provision.

We also would like to point out that we do not like the idea that proposed changes to section 201 would eliminate the ITC's current discretion to come up with either import restrictions or adjustment assistance. We think that adjustment assistance or the import restrictions should still be retained at the discretion of the ITC.

My last comment, very quickly, is that although it is not in S. 1860, we are very concerned about any potential change in the so-called substantial cause of injury provision in section 201. We think to state merely that it is a cause is not sufficient, because if there is a recession, a recession could be a cause of injury to an industry and imports not be the substantial cause.

I would just quickly note that somebody earlier stated that no section 201 case could be successful during a recession. We strongly disagree, because in many of the successful cases stated this morning, those reliefs were granted during recessions.

Thank you very much.

Senator Heinz. Thank you very much, Mr. McCarthy.

Miss Melrose.

[The prepared written statement of Mr. McCarthy follows:]

STATEMENT OF
NATIONAL AUTOMOBILE DEALERS ASSOCIATION

Mr. Chairman and Members of the Committee:

My name is Frank McCarthy and I am the Executive Vice President of the National Automobile Dealers Association (NADA). NADA is a trade association representing approximately 20,000 franchised new car and truck dealers across the country. Our 20,000 members own 35,000 new car franchises of which approximately 17,000 represent franchises for import vehicles. Our NADA dealers sell 15.5 million cars and trucks annually, and come in contact with approximately sixty million American consumers every year.

On behalf of all of our members I would like to express our appreciation for the opportunity to testify before you today regarding proposals to amend the "escape clause" contained in Section 201 of the Trade Act of 1974. NADA members have a deep interest in the trade legislation being considered by the Senate Finance Committee because many of our dealers sell imported automobiles and all of our dealers will be affected by changes in trade laws.

General Views on Trade Legislation

Franchised car and truck dealers believe that an open and healthy trading system is important for America and the retail auto and truck business. For this reason, we support legislation which would assist in removing trade barriers and strengthening the international trading system. However, NADA also believes that trade legislation should be consistent with U.S. international obligations and should not create impediments to the expansion of world trade.

To this end, NADA supports provisions in the Trade Enhancement Act (S. 1860) granting the President authority to participate in a new round of multilateral trade negotiations. These talks present an important opportunity to improve the procedures and expand the coverage of the General Agreement on Tariffs and Trade (GATT). The negotiations are especially important to American franchised car and truck dealers, because trade in vehicles could be one of the first victims of growing protectionism and the breakdown of international trading rules. Last year Americans purchased more than 3.0 million imported cars and trucks.

NADA also favors other provisions in S. 1860, such as measures removing disincentives to American exports and some of the improvements in unfair trade practice procedures. In short, we support those aspects of S. 1860 that would enhance America's ability to compete in the international marketplace and reject those that would hinder that effort.

Section 201 Proposals

We are particularly concerned, however, with several proposed amendments to Section 201 law which in all likelihood would result in import restrictions on a number of fairly traded products.

The debate over changes in Section 201 law is not an abstract one to our members. Section 201 -- which allows import restrictions to be placed on fairly traded goods such as cars and trucks -- is the most likely trade remedy procedure for imposing tariffs or import quotas on motor vehicles. In addition, our members are all too aware of the consumer costs caused by the type of import restrictions which can be imposed in a Section 201 case, having experienced Japan's "voluntary" export restraints for the past five years. Robert W. Crandall of the Brookings Institution estimates that in 1984 and 1985 U.S. consumers paid about $10 billion more for Japanese cars ($2,500 per car) and $16.6 billion more for U.S.-produced cars ($1,000 per car) than they would have in the absence of auto restraints.

Because of these concerns, NADA is strongly opposed to five Section 201 proposals contained in S. 1860 or otherwise pending in Congress: (1) requiring mandatory relief if an industry adjustment plan is adopted; (2) allowing provisional relief if critical circumstances are present; (3) restricting the International Trade Commission's (ITC) discretion in recommending remedies; (4) the auctioning of import quotas imposed in a Section 201 case; and (5) weakening the "substantial cause" standard to allow restrictions when imports are merely a "cause" of injury to a U.S. industry. NADA believes that current law is adequate to protect U.S. industries, and urges Congress to use care in considering amendments to U.S. trade law to assure that the "cures" prescribed are not more troublesome than the illness.

Mandatory Relief with Adjustment Plan

S. 1860 mandates that the President impose import restrictions where the ITC issues an affirmative injury finding and accepts an adjustment plan prepared by an industry labor government panel. The President would be required to adopt the import restrictions recommended by the ITC, or "substantially equivalent" restrictions, unless both Houses of Congress vote to permit him to do otherwise. [Section 305]

We believe that this mandatory relief provision would eliminate the analysis or consideration in Section 201 cases of fundamental U.S. interests -- the impact of import restrictions on U.S. importers, retailers, consumers and the economy as a whole. Under current law, the ITC considers only half of the equation, whether import restrictions would benefit a particular industry seeking relief. By design, it does not consider the other half of the equation, whether the costs of import restrictions to the U.S. economy outweigh those benefits. Only the President is directed under Section 201 to determine what is best for the national economy as a whole by balancing such domestic economic interests as the cost to American consumers, the efficiency of import controls in promoting adjustment, the impact on industries which rely on the imports, the impact on U.S. exporters which might be harmed by retaliation or compensation, and the international interests of the United States. 19 U.S.C. § 2252(c). The mandatory relief provision would prevent the President from considering these factors and thus could result in import restrictions which are responsive only to narrow industry-specific interests, rather than the overall national interest, and thereby do more harm than good to the U.S. economy.

The Congressional override provision does not solve this problem. As a practical matter, given the time restraints, the competing political pressures, and the potential for frequent consideration of these matters, Congress would be hard pressed to effectively perform the careful balancing of interests required to determine whether relief is in the national interest, or what type of relief is most appropriate.

Because Section 201 is a remedy against fairly traded goods and is intended to be invoked only when import relief is in the national economic interest, NADA believes it is essential that the President retain flexibility to assure that Section 201 does not become a vehicle for massive new trade restrictions in the U.S. and abroad. As the recent shakes and shingles case demonstrates, decisions to grant import restrictions under Section 201 can have serious international consequences, and thus should be imposed only after thorough consideration of all interests. It is essential that Section 201 procedures maintain Presidential discretion to consider the broad implications of granting relief.

In addition, NADA is concerned about a provision that, in effect, allows an industry to significantly alter current import practices merely by gaining approval of an adjustment plan for that industry. NADA believes that such plans are simply too unreliable to serve as a basis for automatically triggering import restrictions.

It is relatively easy to develop a superficially attractive plan which purports to solve a domestic industry's problems, but it is very difficult to assess whether an adjustment plan has a "reasonable expectation" of success without relying heavily on information provided by the injured industry itself. It is unrealistic to expect the government to successfully play the role of venture capitalist in determining whether a specific business plan will work. Thus, as a practical matter, adjustment plans will be developed primarily by the affected industries with little opportunity for meaningful, independent verification of the plan's merit. As a result, import relief could be granted on the basis of adjustment plans with no realistic chance of succeeding.

Furthermore, experience suggests that a domestic industry may not be able to implement its adjustment plan, even if it is assumed that the plan would be effective if put into action. For example, during the 1985 footwear investigation the domestic shoe industry stated that it would need to invest $700 million in capital improvements in order to achieve its productivity goals. However, ITC inquiries to individual companies revealed actual plans to invest only $74 million on cost-reducing capital improvements if five-year quotas were imposed. Although S. 1860 does include procedures to eventually modify or terminate import relief if an industry is not implementing its adjustment plan, import restrictions could continue for a significant period of time before these procedures are used.

It should be emphasized, however, that the authority to alter or revoke relief is triggered only by the failure of an industry to implement in a satisfactory manner the specific actions in its adjustment plan. If the plan proved to be ineffective but was being fully implemented, import restrictions would continue for the full five years. At no time would the industry be required to demonstrate that the plan actually was succeeding in preparing domestic firms to compete in an open market.

Most importantly, even if an industry implements a successful adjustment plan enabling it to compete with imports, the mandatory relief provision still completely excludes consideration of whether the benefits to the domestic industry outweigh the costs of import restraints, as discussed earlier.

Provisional Relief in Critical Circumstances

S. 1860 provides that the President must impose temporary relief, pending the outcome of a Section 201 case, if he finds the existence of "critical circumstances" (where a delay in imposing relief would cause damage to the industry that would be difficult to remedy at the end of the investigation). [Section 302] NADA believes that this amendment is unnecessary, could result in unmerited import restrictions, and could prejudge the President's final decision.

Section 201 investigations already proceed on a tight time schedule. The ITC must make its final determination within six months of initiation, the President is required to announce his decision within sixty days of the ITC determination, and the President has an additional fifteen days to impose relief. Thus, a domestic industry can gain significant import relief within 8-1/2 months of filing its petition. Because of the extensive information-gathering and complex analysis required, the process cannot properly move at a faster pace and result in a fair determination. A domestic industry petitioning for severe restrictions on fairly-traded imports is not unduly burdened by being required to prove its case in a rapid proceeding before gaining relief.

S. 1860's temporary relief provision would create a vague "critical circumstances" test unrelated to the merits of a Section 201 case, which would grant the President broad discretion to impose interim relief under a wide range of circumstances regardless of whether a domestic industry is being seriously injured by increasing imports. Nor would temporary relief be based on a preliminary ITC determination, which is a prerequisite for interim relief in antidumping and countervailing duty cases. Thus, fair trade could be disrupted significantly for several months in cases where import restrictions ultimately were found to be totally unjustified.

NADA believes that the provisional relief proposal could also prejudge the final determination in a Section 201 case by forcing the President to make a quick interim decision in a highly-charged political context before the facts are available. Under present law, the President's remedy determinations are the product of extensive consideration by a number of departments and agencies. An interim relief provision would require that essentially the same decision be made in a much shorter time period with little information. The subsequent granting of interim relief would, we believe, make it that much easier to impose import restrictions after a final determination, would tend to solidify Administration views, and could create a presumption that relief should be continued, despite information developed later during the investigation.

The provisional relief amendment simply goes too far. Any possible need for interim relief will occur in exceptional cases, such as those addressed by the perishable commodities provision. Congress should not adopt a broad, unfocused, and potentially dangerous provision to "solve" a narrow problem.

Restrictions on ITC Discretion

The Trade Enhancement Act would require that the ITC recommend import restrictions to the President if it makes an affirmative injury finding. [Section 301(c)(1)] Under current law, the ITC can recommend either import restrictions or adjustment assistance, but need not propose both.

NADA believes that the ITC should retain this discretion because, in some cases, import restrictions will not aid the long-term competitiveness of a domestic injury, but will only impose costs on the rest of the economy. In these instances, adjustment assistance to help workers and companies in transition may be all that is appropriate.

Placing restrictions on the Commission's discretion is particularly troublesome when combined with S. 1860's requirement that the President impose the remedy recommended by the ITC, or one substantially equivalent. Together, they could result in the imposition of import restrictions where such a remedy is inappropriate, and where neither the ITC nor the President favor restrictions.

Lowering the Causation Standard

S. 1860 does not include two particularly dangerous Section 201 proposals which have been considered during Congressional trade bill debate -- reducing the causation standard and the auctioning of import quotas. Because they could be proposed during Committee and Senate consideration, NADA would like to state briefly its reasons for opposing the proposals.

Several Members of Congress have introduced legislation which would lower the causation standard under Section 201 law to allow that import restrictions be imposed when imports are merely a "cause" of injury, as opposed to present law which requires that imports be a "substantial cause" of injury.

NADA believes that these proposals will result in a dramatic increase in import restrictions in cases where imports are not the basic problem, particularly during periods of economic slowdown. A simple "cause" standard would allow import restrictions where imports are only one of many causes of a domestic industry's distress, and would not require that imports be even a particularly important cause. Since a small increase in imports (or a slight increase in import share of a declining market) could be considered at least a minor cause of injury, we believe this proposal could virtually guarantee import relief whenever a domestic industry is having problems. This result is inconsistent with the purpose of Section 201, which is to provide a temporary adjustment period to U.S. industries being injured by increasing imports, not by other factors. For the same reasons, a "cause" test is inconsistent with Article XIX of the GATT, on which Section 201 is based.

Auctioning of Quotas

Some Members of Congress have proposed that import quotas imposed in Section 201 cases be allocated to U.S. importers at public auction. NADA opposes quota auctions because they will subject auto dealers and other retailers to uncertainties of supply and price which would scramble established commercial relationships. Retailers and importers would not know from one auction to the next whether they would have any quota at all. The average U.S. franchised dealer -- with annual operating expenses of about $1.25 million and approximately 35 employees -- requires a dependable supply of automobiles to stay in business. No dealer could operate with the unpredictable and constantly fluctuating supply which would result from quota auctions. Nor would the public tolerate the speculation and auction profiteering which would result.

Mandatory Trade Deficit and Export Targets

While amendments to Section 201 are of greatest concern, NADA also opposes efforts to establish mandatory trade targets. Several proposals are pending in Congress -- such as the Japan bill (S. 1404) and the Gephardt amendment included in the House trade bill -- which would establish mandatory country-by-country trade deficit or export levels, and impose significant U.S. import restrictions if the levels are not met.

NADA strongly opposes these measures because they set unrealistic deadlines and trade levels that would virtually guarantee U.S. import restrictions, and could lead to auto and truck import limits. The proposals will not increase U.S. exports or reduce foreign trade barriers, their ostensible purpose, but will hurt U.S. consumers by reducing product availability and increasing prices. NADA urges the Finance Committee to exclude S. 1404 from its trade bill and to fight to eliminate the Gephardt amendment during the House-Senate conference.

Conclusion

American franchised car and truck dealers believe the Senate should take advantage of the opportunity presented by this year's trade bill to enact reforms which will expand U.S. trading opportunities and strengthen the international trading system. But in doing so, NADA urges Congress to reject proposals -- such as the amendments to Section 201 law discussed in this testimony -- which will serve only to erect new trade barriers against fairly traded goods.

STATEMENT OF MARY K. MELROSE, DIRECTOR, TRADE POLICY, CITIZENS FOR A SOUND ECONOMY, WASHINGTON, DC

Ms. MELROSE. Thank you, Mr. Chairman.

On behalf of Citizens for a Sound Economy, a grassroots organization dedicated to expanding consumer opportunity and economic choice, I am pleased to be here today to discuss the proposal to give the President the option when granting 201 relief to allow unlimited exemptions from the antitrust laws for mergers and acquisitions in industries seriously injured by foreign imports.

In 1960, 18 of the 20 largest industrial companies were U.S. companies. In 1984, only nine were U.S. companies. American firms now face stiff international competition.

If a merger among two or more American companies would improve their competitiveness when threatened by imports, then certainly such an option should be given to the President when considering section 201 assistance. Mergers promote efficiency and allow firms to benefit from economies of scale, enabling them to produce and market their products at lower cost.

Antitrust laws were enacted at the turn of the century because political leaders were alarmed at the explosive growth of large corporations serving national markets. They feared sheer size would enable corporations to ignore consumers' desire for low-priced, high-quality goods and services. With today's worldwide markets, we no longer need to fear that domestic mergers will create effective monopolies.

Some today claim there is no connection between domestic antitrust restrictions and the ability of American firms to compete in the world marketplace. But even in 1914, some lawmakers recognized a strong connection. President Wilson, himself, recommended exempting firms engaged in international competition.

The past several decades have seen radical change as both the capital market and many key product markets have moved from national to international in scope. Countless European and Japanese firms have gained sales, market share, or both, with their governments' acquiescence or encouragement and at the expense of American industries.

The protectionist response is to keep foreign products out of the United States. But in addition to harming exporters, importers, and consumers, this response does nothing to enhance the competitive position of American companies overseas.

The United States needs to follow a consistent policy of promoting competition in world markets. This implies not only opening American markets but removing our own barriers which prevent U.S. firms from effectively competing in foreign markets. The imposition of tariffs and quotas under section 201 is such a barrier. A relaxation of our antitrust laws would be a better option.

Senator HEINZ. Does that complete your testimony, Miss Melrose?

Ms. MELROSE. Yes, Mr. Chairman.

Senator HEINZ. Thank you very much.

Mr. Uribe.

[The prepared written statement of Ms. Melrose follows:]

C/S/E

HEARING ON REFORM OF ESCAPE CLAUSE
BEFORE THE
COMMITTEE ON FINANCE
JULY 17, 1986
ORAL REMARKS OF MARY MELROSE
CITIZENS FOR A SOUND ECONOMY

Mr. Chairman, on behalf of Citizens for a Sound Economy I am pleased to have this opportunity to present our views on proposals to reform section 201 of the Trade Act of 1974. I would like to discuss one aspect of Title III of S. 1860, the Trade Enhancement Act, which deals with additional remedies available to the president when granting import relief under the escape clause. Particularly, I refer to the proposed presidential option to allow a limited exemption from antitrust laws for mergers and acquisitions in industries seriously injured by foreign imports.

As you know, the president has proposed a package of legislation to modernize the federal antitrust statutes. The Senate Judiciary Committee held hearings this past spring on these proposals. One provision, S. 2161, providing a five-year limited antitrust exemption for mergers within distressed industries, was referred to the Finance Committee. These recommendations are based on a review by the White House Economic Policy Committee of the effects several antitrust laws have on the competitive position of American industries in the world marketplace. The President's Commission on Industrial Competitiveness also recommended relaxation of antitrust laws. Mr. Chairman, you may remember this committee held hearings last year on the report's recommendations.

It is no longer true that American firms are the "biggest" and dominant firms in the world market. In 1960, eighteen of the twenty largest industrial companies were U.S. companies. In 1984 only nine were U.S. companies. American firms now face stiff international competition. If a merger of two or more American firms would improve their ability to compete against foreign firms, then certainly such an option should be given to the president when considering section 201 assistance. Such action would certainly be more beneficial than the temporary imposition of tariffs or quotas.

Why would mergers encourage competition? Larger firms, especially those in industrial sectors severely affected by foreign competition, may benefit from economies of scale which enable them to produce and market their products at lower costs. In addition, mergers tend to promote efficiency and provide a check against inefficient management.

CITIZENS FOR A SOUND ECONOMY
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[illegible]

Let me provide you with some historical background on the original enactment of the Sherman Act in 1890 and the Clayton and FTC Acts of 1914, to put this discussion in better perspective.

At the turn of the century, political leaders were alarmed at the explosive growth of large corporations serving national markets. Many realized that large-scale production and distribution was immensely more efficient, but there remained a fear that sheer size would enable corporations to ignore consumers' desire for low-priced, high-quality goods and services. At the same time, high tariffs and other trade barriers deprived consumers of the opportunity to purchase imported products. The sensible solution would have been to eliminate trade barriers and allow foreign competition to discipline would-be monopolists.

However, the fear of bigness carried the day. Special interests retained their trade restrictions, and antitrust laws were passed which deprive Americans of the full economic advantages of efficient business practices.

Some present-day critics of the antitrust relaxation proposals would have us believe that the proposals are some kind of newly-invented plot to emasculate America's antitrust laws, employing the trade deficit as a convenient excuse. These critics claim that there is no connection between domestic antitrust restrictions and the ability of American firms to compete in the world marketplace.

Yet even in 1914, some lawmakers recognized that there is a strong connection between antitrust restrictions and competitiveness. In the course of debate over the Clayton and FTC Acts, many congressmen in both parties fought for a clause which would exempt firms engaged in international competition. President Woodrow Wilson himself recommended such an exemption in an address to Congress on January 20, 1914. But such thinking did not carry the day.

Today, the need to allow American firms to compete on an equal footing with foreign firms is even more pressing. At the turn of the century, companies were transformed from local to national in scope. The past several decades have seen an equally radical change as both the capital market and many key product markets have moved from national to international in scope. Economists across the political spectrum, from MIT's Lester Thurow to the University of Chicago's Yale Brozen, recognize that any discussion of the number and size of firms which ignores international competition is fundamentally irrelevant.

In the steel, chemical, pharmaceutical, auto, rubber, electronics, and countless other industries, European and Japanese firms have gained sales, market share, or both at the expense of American firms. The protectionist response is, of course, to keep foreign products out of the United States. In addition to harming exporters, importers and consumers to benefit a few, this response does nothing to enhance the competitive position of American companies overseas.

While an irrational fear of large enterprises has helped shackle domestic businesses, other Western nations have often tolerated or encourage the growth of big firms. Antitrust laws in the European Community generally only focus on specific practices, such as price fixing and agreements to limit production. While West Germany and Britain are more likely to investigate mergers, France, Italy, and Japan have actively promoted them in an effort to create enterprises capable of competing in international markets--witness France's Peugeot-Citroen, and Italy's IRI, a state-holding company and Europe's fourth largest firm. Although we doubt that massive industry combinations which exist only because governments have assembled them can ever make it on their own, other governments' willingness to let firms experiment with large-scale organization is a refreshing contrast to the phobias of some in this country.

The United States needs to follow a consistent policy of promoting competition in world markets. This implies not only opening American markets, but removing our own barriers which prevent U.S. firms from effectively competing in foreign markets.

In conclusion, Citizens for a Sound Economy is against the trade restrictive remedies, such as tariffs and quotas, that are the common options now available to the president under Section 201. Instead, a better option should be available that will enable an industry to truly become more competitive. Relaxation of our antitrust laws is such an option.

STATEMENT OF GEORGE URIBE, EXECUTIVE VICE PRESIDENT, WEST MEXICO VEGETABLE DISTRIBUTORS ASSOCIATION, NOGALES, AZ

Mr. URIBE. Mr. Chairman, thank you for the opportunity to testify before this committee on the fast-track provision of Senate bill 1860, section 209, which deals with perishable products.

My name is George Uribe. I am the executive vice president of West Mexico Vegetable Distributors Association. I am here in place of the president, Mr. Kelly Larey, who unfortunately could not be here because of his farming operations in California. I would ask that his written statement be entered into these proceedings as part of the official record.

Senator HEINZ. Without objection, so ordered.

Mr. URIBE. Thank you, Mr. Chairman.

The association is composed of approximately 70 businesses in Nogales, AZ, that import fresh winter vegetables for retail and home consumption from Mexico during December through May. The association members provide approximately 40 percent of all of the winter vegetables that are consumed in the entire United States and Canada. The only other major source is southern Florida.

We are opposed to the fast-track escape clause for perishable commodities for the following reasons:

One, the proposed 20-day investigation period is too short. The winter produce business is very complex and volatile with prices fluctuating by the day, sometimes even by the hour. We think a 45-day investigation period is absolutely necessary to determine the trend of imports. If you look at just a 20-day period, you will not be able to tell what is happening except that there is a large swing in prices and supplies. You need a longer period to determine the cause and effect.

Two, we believe that the International Trade Commission should conduct the investigation, not the Agriculture Department. ITC has the necessary knowledge and skills.

Three, the House bill does not specify what import relief will be granted. We think the import relief should be clearly stated. American businesses cannot function if there is a threat that suddenly, after a 20-day investigation, there may be a quota or a large tariff increase, or both.

A fast-track investigation can never be fast enough to keep up with the changing conditions of the fresh produce business. A fast-track investigation would have to be so fast that there would be insufficient time for a reasonable investigation. We think that the logical conclusion is that only a conventional escape clause investigation is useful because only a long-range trend can show if imports are a real threat. Short-term fluctuations are a natural part of the business.

The original purpose of the fast-track provision was to take care of commodities, such as apples, potatoes, onions, and carrots, to see if there is a speed up in the trend of increased imports.

The original purpose was not to include all perishable commodities, some of which have a very, very short shelf life with constant fluctuations in prices.

We are opposed to the fast-track provision because it can be used to harass Mexican produce needlessly, disrupt the marketplace, and increase prices to the American consumer. We think that Americans should be protected from unfair trade, but not from every fluctuation or change in trade and prices.

Fast-track escape clause for most perishable commodities is not a good or practical idea.

In conclusion. the end result of a fast-track provision will be to disrupt the market. It might seriously affect our trade relations with Mexico which is one of our largest—the third largest—trading partner with the balance of payments in favor of the United States.

Thank you, Mr. Chairman.

Senator HEINZ. Mr. Uribe, since you have got a second or two left, let me ask you a question.

Mr. URIBE. Certainly.

Senator HEINZ. Which is, you are talking about things like lettuce, tomatoes, peaches, cucumbers, watermelons. And you are saying that there needs to be a 45-day period——

Mr. URIBE. Yes, sir, Mr. Chairman.

Senator HEINZ [continuing]. For the investigation.

Will lettuce, tomatoes, peaches, cucumbers, and watermelon really last 45 days?

Mr. URIBE. No, sir. I am only talking about tomatoes, cucumbers, eggplants, squash, bell peppers. They have approximately a 2-week shelf life after the time that they are picked.

Senator HEINZ. I think the framers of this provision had that in mind, that there is a very short life here. These are perishable commodities. And what you are proposing is a process, 45 days or so, that is longer than the life cycle of these products.

Why doesn't your proposal totally neuter——

Mr. URIBE. That is because of the fluctuation in prices on a day to day, and sometimes even on an hourly basis. You cannot really tell in any kind of a short investigative period whether or not the imports were the actual cause for the drop in prices.

Supply and demand generally dictates what will be the price of any given commodity in the perishable industry. And that is the reason why we would be primarily opposed to it.

Senator HEINZ. Jeff Bialos, it is your turn.

[The prepared written statement of Kelly Larey follows:]

STATEMENT OF

KELLY LAREY

PRESIDENT, WEST MEXICO VEGETABLE DISTRIBUTORS ASSOCIATION

NOGALES, ARIZONA

BEFORE THE SENATE COMMITTEE ON FINANCE

July 17, 1986

Mr. Chairman, Members of the Committee, my name is Kelly Larey. I am the president of the West Mexico Vegetable Distributors Association and president of Kelly Produce, Inc., a company located in Nogales, Arizona, and involved in the importation and sales of fresh winter fruits and vegetables from Mexico.

The House-passed omnibus trade bill has a fast track provision which would provide emergency relief in section 201 investigations involving perishable products. In a section 201 investigation, the International Trade Commission is to decide within six months whether increased imports are a substantial cause of serious injury to a U.S. industry. If it decides affirmatively, the President has the option to decide whether or not to impose import relief.

Under the fast track provision we are now discussing, a domestic perishable produce industry that has filed a section 201 petition also could ask for emergency relief within 150 days of filing the petition. The Department of Agriculture then would be required to decide within 20 days whether or not emergency relief should be granted, and the U.S. Trade Representative then would have seven days within which to decide whether to deny the relief in the national economic interest.

The Association is opposed to the emergency relief provisions or the so-called "fast track" concept of providing section 201 or "escape clause" import relief. The Association is not against providing relief from unfair import competition. As residents of a border community, we are all too aware of what sudden shifts in trade can mean and we are all most sympathetic to those who are affected by unfair trade competition. We would like, however, to stress that we are against *unfair* competition, not ordinary competition.

We believe that competition is good for business, otherwise there would not be more than 70 of us in the winter fresh fruit and vegetables business in the small city of Nogales, Arizona. The members of my Association import vegetables for retail sales and home consumption, not for processing or canning.

Members of the Association are particularly sensitive to and opposed to the concept of fast track import relief because of our unique role in the American food market.

In the winter months, between December and May, most North American areas are too cold to grow many types of vegetables and fruits. During those winter months, American consumers depend mostly on Florida growers and importers like ourselves for fresh winter vegetables such as tomatoes, cucumbers, eggplant, squash, and green peppers. (There is also some limited greenhouse production.) This means the American consumer is heavily dependent on winter vegetables from Florida and Mexico.

Traditionally, winter vegetables from Florida have been shipped to the states east of the Mississippi River and also to the eastern Canadian provinces; vegetables from Mexico to the states west of the Mississippi River and to the western Canadian provinces. Modern transportation today makes it possible, however, for Mexican tomatoes to be shipped to New York City and Florida-grown tomatoes to California.

There is also a basic difference in the tomatoes from Florida and Mexico that are shipped during the winter months. Approximately 80 percent of the Florida tomatoes are "mature green" tomatoes that are subjected to ethylene gas to make them turn pink. About 20 percent of the Florida tomatoes are "vine ripes," which are tomatoes that are picked when they first start to show color. The vine ripes naturally continue to ripen and attain full color during shipment and subsequent days. Approximately 80 percent of the Mexican tomatoes which are imported by the members of my Association are vine ripes, while the balance are mature greens. There is, therefore, a fundamental difference in the type of vegetable shipped from the two regions; nevertheless, there is healthy and strong competition between the two regions.

Unlike many other types of fruits and vegetables, there are basically only two sources of fresh winter vegetables -- Florida and Mexico. Traditionally Florida has supplied the major portion of the winter vegetables, with Mexican imports supplying the balance. This sharing of the market has existed for many years, with the percentage of the market share seesawing back and forth depending mostly on weather factors.

Other types of vegetables do not have the same unique circumstances. For example, the carrots, potatoes, and onions that are shipped from Canada are grown during the same growing season in the United States as well. Such vegetables are also not highly perishable.

Winter vegetables, however, are extremely perishable. They must be packed, shipped, and made available in stores within a few days of harvest. Any delays will result in noticeable degradation. That means winter vegetables must be packed and shipped when they are ready to harvest; there can be no delays. Some other types of vegetables, however, are much more tolerant of harvest or shipping delays.

The extreme perishability of winter vegetables means that there always will be short-term fluctuations in the supply and wholesale prices. When good growing conditions provide a good harvest, there will be more produce and prices might fall. But just as quickly, the supply might diminish and prices might rise.

The fresh produce business is extremely risky in many ways, and farmers should not expect to make money every week or month, or every year. In fact, in some instances, farmers might have to depend on one good year to carry them through poor years. In other words, in the fresh produce business, there are no guarantees of success, and we do not like to see something like the fast track import relief provision that appears to have the effect of guaranteeing a safe growing season for some farmers who might take the attitude that blaming imports would be an easy way out of a poor year brought about by Mother Nature.

The objections we have to the fast track provisions are as follows:

a. As proposed in the House bill, **H.R. 4800**, there are insufficient safeguards. At the least, there should be specific provisions for notices in the Federal Register and public hearings.

b. The House trade bill has no language to limit the type of import relief that can be granted under the fast track procedure. We believe there should be a limitation on the degree of import relief that can be imposed under the fast track provision. There should be a specific cap on the extent of tariff increases and a requirement to clearly set forth specific reasons and rationale for quantitative restrictions.

c. Under the proposed bill, the import relief would be decided by the Secretary of Agriculture in consultation with the Special Trade Representative.

We believe, however, that the ITC, which will be handling the basic section 201 investigation, should make the decision on emergency relief -- perhaps in consultation with the Department of Agriculture. The ITC is of course totally familiar with the relevant legal standards, and would, we think, be better equipped to decide whether emergency relief should be granted.

d. Although the proposed bill takes note of the fact that "normal seasonal fluctuations in imports of a perishable product" should not be used to determine import injury, it remains unclear as to the types of fluctuations that are to be taken into consideration. Since Association members import fruits and vegetables only in the winter months, there will be a large seasonal fluctuation in the import statistics as far as our activities are concerned. At the same time, within the seasonal fluctuations there can be additional fluctuations due to weather or harvest conditions.

The fresh fruit and vegetable business is very sensitive to weather conditions. For example, good weather in the overseas growing area -- in our case, sunny Mexico -- can result in increased imports, but bad weather in the domestic growing area can also result in increased imports, in particular if freezing weather prevents domestic harvests. Bad growing weather in a competing domestic area or a competing overseas area will mean that much of the demand here in the United States will be met by whichever region or country that is not affected by the weather.

Bad weather in the marketing area will also decrease shipments. If snow and icy weather prevent truck traffic, then fresh winter vegetables will not get to the market and sales will be down. Imported and domestic produce consequently will be diverted to regions and areas that do not have bad weather, but perishable produce cannot always be diverted in timely fashion to favorable sales areas so that a domestic growing area might show decreases in sales while imports might increase.

Businesses can be affected not just by imports but by many factors such as bad weather, insect infestation, poor crop quality, consumer indifference, transportation delays, worker strikes, and numerous other adverse conditions. Import competition is only one of many factors so that we believe a fast track investigation is not an appropriate way to determine the need for import relief.

What I am emphasizing is that there are so many reasons why domestic volume might be down and imports up. The produce business is complicated, and there is no easy way to quickly determine why the domestic industry is doing less well than before.

My main objection, therefore, to a so-called fast track import relief provision is that it is so easily subject to abuse by those who might wish to harass the competition or take the easy way of blaming imports.

Because the investigative process must take place quickly, there is serious potential for errors or lack of thorough research. This proposal is now before Congress because the long investigative periods that were necessary for past investigations under the present law were frustrating to some complainants. The investigations have taken time because the conditions which resulted in increased imports were complex and numerous. If it had been possible to easily and simply determine injury or a threat of injury, investigations under the present law would be short and quick. In other words, past experience has shown that investigative short cuts cannot be taken.

There has been some suggestion that the ITC monitor the level of imports for certain selected perishable commodities. In today's world of Gramm-Rudman, we believe such a monitoring program would be excessively costly, not to mention the fact that such selective monitoring would be inequitable.

Proponents of the fast track provision say that the procedures for the CBI and Israel free trade area laws will provide sufficient protection against abuse. I cannot agree with that argument. The CBI and Israel FTA laws eliminated existing import duties for certain items for which there were established import patterns and volumes. It would be easy, therefore, to determine if imports have suddenly increased after import duties were eliminated. If the finding is positive, the tariff is put back in place again. Under such circumstances, a fast track approach might be appropriate to restore the tariff, as specified in the CBI statute. The cause of the problem and its solution might be relatively easy to determine.

In the case of increases in imports of perishable products not included under the CBI or Israel FTA laws, the cause of the increases and the effects of those increases are not easily determined. Because there are so many possible reasons for increases in imports, a fast track approach to import relief is not appropriate. The conditions of business in perishables are too complex to be examined and analyzed in just 20 days under the fast track provisions. A more commonly accepted investigative period of 45 days might be appropriate. The antidumping and countervailing duty laws both have 45-day investigation periods and the International Trade Commission has been able to make preliminary findings within that time limit.

To subject only perishable products to fast track import relief is unfair and inequitable. If fast track investigations are to be assumed as possible, then such investigations should be applied to non-perishables as well. I think most people would agree that a 20-day investigation could not possibly determine injury in case of a durable commodity. There should be no reason to assume that an investigation involving perishable products is easier and can be completed in 20 days.

The fast track import relief provision, therefore, should not be allowed to become law. It is an impractical, unfair, and preposterous provision.

A fast track provision was in effect from 1951 until it was replaced by the 1962 Trade Expansion Act.* Congress determined that all escape clause actions should follow a uniform procedure, and I believe that there is no need now to return to bad legislation.

I urge this committee, therefore, to drop or significantly amend the proposal for fast track import relief for perishable products, because it is unfair and unnecessary. Any escape clause, or section 201, investigation involving perishable commodities should be handled in exactly the same way as durable goods.

Thank you for allowing me to present the views of the Association before this Committee today. I am willing to answer any questions that the members of this Committee might have.

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* See memorandum on **H.R. 9900** of the 87th Congress, the "Trade Expansion Act of 1962," proposed by the U.S. Tariff Commission, April 9, 1962, page 50.

Supplemental information submitted by West Mexico Vegetable Distributors Association in response to a question from Senator Heinz:

A minimum 45-day investigation period is needed for a fast track escape clause investigation because a shorter period will not reveal the *trend* in the import volume of fresh winter vegetables. Because prices and import volume fluctuate day by day, frequently by the hour, a short investigation period might show a dramatic increase which is in reality very short-lived. The increase might be an aberration in import volume, for example, during a ten-day period when imports are rebounding from a depressed market due to oversupply from good growing weather in the domestic production area, or it might be in response to freezing weather in the domestic growing area which consequently is shipping very limited quantities. The sharp increase in shipments, therefore, might be needed temporarily to fill a gap in the marketplace so that the higher volume of imports will stop or ease as soon as the domestic growing area is back in production. Such short-term increases are natural and normal in the fresh produce business and do not endanger the domestic growers.

A short investigative period for a fast track escape clause, therefore, might take a "snapshot" of a short-lived phenomenon. It would be like looking at a short clip of a football game film and concluding that the entire game consists of the quarterback handing off to the running back because only that event of the game was viewed. In like manner, a short investigation period could give a false impression of the actual conditions, and might be used to put into effect responses that are totally unnecessary to protect American producers.

A longer investigation period will show whether imports are increasing as a gradual trend, which might possibly affect the welfare of domestic growers. If the daily fluctuations, when averaged, show a convincing upward trend, then there might be reason to put remedial action into place. On the other hand, if the investigation shows a series of peaks and valleys in import volume (as is normal in the produce business) but not an overall upward trend, then import remedies should not be used.

Furthermore, many vegetables and fruits have such a short shelf life that trying to shield them from import competition by use of an escape clause is unreasonable. In the case of table grapes, for example, the harvest period for an area is only weeks long so that what might appear in general statistics as an upward trend in imports is only a normal seasonal event as growing areas go into and out of production. By the time the import increases are noted, and an escape clause petition is drawn up, sent to Washington, accepted, and the investigation started, the season for a vegetable or fruit might be over. Consequently, the idea that a fast track version of an escape clause is appropriate for perishable commodities is absurd in many instances because the administrative tasks of implementing the provision cannot, and were not intended to, keep up with the unique and rapidly changing conditions of the produce business. This is not to say that an escape clause provision is unusable when perishable commodities are involved. It does mean, however, that the argument for a fast track is not applicable in all instances involving perishable commodities.

The fresh produce business is complex and there are many reasons for success or failure. To take into account the seasonal nature of the business and the normal ups and downs of the perishable produce market, an investigation period of 45 days or more is needed.

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STATEMENT OF JEFFREY P. BIALOS, ESQ., WEIL, GOTSHAL, AND MANGES, WASHINGTON, DC, ON BEHALF OF THE AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

Mr. BIALOS. Thank you, Senator Heinz.

I am here today on behalf of the American Association of Exporters and Importers, which represents over 1,000 company members engaged in international trade.

Despite some ideas in the pending legislation we think are worth pursuing, the association, on balance, urges the committee to reject the changes to section 201 of the Trade Act of 1974 now under consideration.

We have a more detailed statement of Stuart Rosen, vice chairman of the Trade Restrictions Committee of the association, who is unable to be here today, and I ask that this statement be included in the record of the proceedings.

Senator HEINZ. Without objection, so ordered.

Mr. BIALOS. Excuse me.

Senator HEINZ. Without objection, your request is granted, ordered.

Mr. BIALOS. Thank you very much.

The basic premise of our view on these pending pieces of legislation is: "If it ain't broke, don't fix it." We think that section 201, as it is now constituted, has operated effectively since it was last amended in 1974, which, by the way, made it easier for domestic industries to obtain short-term competitive relief from fairly traded imports. Since 1974, the ITC has found injury in 33 of the roughly 56 cases brought under the statute. Indeed, in 14 of those cases relief was granted. In other cases, as you know—in steel and also in automobiles—the 201 process has served as the basis for the negotiation of voluntary export restraints.

In short, we think that 201, as it is now constituted, properly affords the President the ability to go beyond the narrow confines of the ITC decision process and determine whether import relief on fairly traded imports is in the overall national economic interest.

We think the President's decision in the footwear case last year indeed supports this principle. In that case, the President properly made a tradeoff that an industry already afforded substantial protection, which had already adjusted, simply did not need any more trade relief; to give it any more would not be in the overall national economic interest. We therefore urge that the President have continued discretion to make such judgments.

Another fundamental objection of the association is that the proposed legislation blurs the very traditional and important distinction in trade law between fairly and unfairly traded imports.

In this regard, we believe that a finding of injury under 201 should not, as proposed, be in any way based on whether there is an antidumping or countervailing duty order outstanding. Further, it should not be based on any other kinds of vaguely defined factors, such as foreign government actions.

We further object to the provisions in S. 1863 which narrow the discretion of the ITC and the President in 201 cases, virtually assuring automatic import relief to any domestic industry that files a petition.

At the same time, however, I would like to add that the Association believes that there are certain ideas for amendment to 201 which deserve further study. For example, we believe that the proposal to mandate that the domestic industry provide a detailed adjustment plan deserves study; a domestic industry blueprint, if you will, on how to regain its competitiveness should be considered. Such a proposal, we believe, would promote the basic concepts of section 201. That is to say, it would provide the domestic industry with a temporary period of adjustment in which it could regain its competitiveness and, at the same time, it would not allow an inefficient industry unwilling to change its ways any kind of long-term protection from fairly traded imports.

In sum, the Association believes that section 201 should not become just an easy tool for domestic injury to insulate themselves totally from the hard choices of competition. And on that basis, we oppose the pending legislation here today.

[The prepared written statement of Stuart Rosen follows:]

TESTIMONY

OF

STUART ROSEN
VICE-CHAIRMAN
TRADE RESTRICTIONS COMMITTEE

ON
BEHALF
OF

THE AMERICAN ASSOCIATION OF
EXPORTERS AND IMPORTERS

BEFORE THE
SENATE COMMITTEE ON FINANCE

REGARDING

S.2099 and S.1863
BILLS TO AMEND
SECTION 201 OF THE TRADE ACT OF 1974

JULY 17, 1986

American Association of
Exporters *and*
Importers *11 West 42nd Street, New York, N.Y. 10036 (212) 944-2230*

July 17, 1986

Mr. Chairman, members of the Committee, I am Stuart Rosen, Vice-Chariman of the Trade Restrictions Committee of the American Association of Exporters and Importers (AAEI). I am here today on behalf of AAEI to express its opposition to changes to Section 201 of the Trade Act of 1974 as proposed in S.2099 and S.1863.

AAEI is a national association comprised of over 1000 member firms involved in every aspect of international trade. Our members —— all U.S. companies —— have a great interest in the attempts to amend U.S. trade laws. Hearings already held by this committee's Subcommittee on International Trade have focused, and hearings to be held by this committee will focus on unfair trading practices and the complex laws which address them. Section 201 of the Trade Act of 1974, however, allows relief to be granted to a U.S. industry which is being seriously injured or threatened with serious industry by fairly traded imports —— imports which are not in violation of unfair trade laws. AAEI believes, as it pointed out in its letter of May 14, 1986 to this committee, that the fundamental distinction between laws which provide import relief from fairly traded imports and those laws designed to remedy "unfair" trade practices must be preserved and the laws must be flexible enough to benefit the interests of the entire United States.

Much of the debate surrounding the amendment of section 201 stems from President Reagan's decision last year not to grant relief to the domestic footwear industry after the ITC found serious injury was substantially caused by imports. Critics of the decision said it proved that our trade laws do not work. To the contrary, President Reagan's decision was the only one he could have reached when he weighed the national economic interest against the costs of protection, according to the law.

"If it ain't broke, don't fix it" is a common expression. Since section 201 was last amended, in 1974, to make it easier for industries to seek competitive relief from imports, the ITC has found injury due to fairly traded imports in 33 of the 56 cases brought before it. In 14 of those cases "import relief" has been granted in some form, and in other cases, most notably steel and automobiles, relief was achieved through voluntary export restraint agreements. The President has and must maintain the ability to go beyond the narrowness of the ITC decision process in order to decide what is in the entire nation's economic interest. AAEI believes that there are no more changes necessary to section 201, especially in light of the amendments enacted by the Trade and Tariff Act of 1984.

Despite some provisions which may be worth pursuing, to be addressed below, on balance AAEI must urge this committee to reject S.2099 and S.1863. Both bills blur, if not obliterate, the distinction between fairly traded imports and unfair trade practices by weighing prior or current antidumping (AD) or countervailing duty (CVD) orders as factors in a §201 investigation. S.1863 goes even further by using a finding of injury under §201 to find injury in, or even initiate, an AD, CVD case, or §301 case. The bills also mandate that the ITC determine whether the competitiveness of the imports in question is a result of "any combination of coordinated foreign government actions." The fact that a foreign government or even the U.S. government engages in vaguely defined, coordinated actions to assist its exports should not be actionable under fair trade laws. If a government's coordinated action results in an unfair subsidy to or dumping of its exports then it is already subject to the AD or CVD laws.

Further, there are many provisions in S.1863 which considerably narrow the ITC's and the President's discretion in §201 cases, virtually assuring "automatic" import relief to a domestic industry which files a petition. The creation of a tripartite advisory group to create an adjustment plan for the domestic industry forces the government to practically guarantee import relief if an adjustment plan can be agreed upon. The involvement of the White House before injury is found, combined with the provision eliminating the ITC's option to recommend adjustment assistance instead of import relief effectively would remove the ITC's status as an independent agency and would eliminate consideration of U.S. consumer and overall economic interests.

Special provision has been made in S.1863 for the copper and footwear industries to gain another §201 hearing, the third for the footwear industry in four years. The bill would allow the ITC 60 days to reaffirm its previous finding and the President 30 days to make a new determination. This short-circuits the legislative process by effectively overriding the President's veto of the Textile and Apparel Trade Enforcement Act of 1985 which would have placed quotas on footwear. Section 201 currently allows Congress to override a President's decision of "no relief" through the passage of a joint resolution. In AAEI's opinion there is no need for separate treatment of the footwear and copper industries.

As a matter of general policy, AAEI does not believe there are any circumstances which warrant provisional import relief unless and until there exists a reasonable indication of serious injury or unfair trade practices. S.1863 would shift the burden of proof regarding injury from the domestic industry to the foreign exporter and jurisdiction for injury determinations from the ITC to the Department of Agriculture and the USTR. "Guilty until proven innocent" is fundamentally inconsistent with U.S. law and our international obligations. This position is applicable to proposals authorizing provisional relief in the event of "critical circumstances" or perishable agricultural products.

There are, however, suggested amendments to Section 201 which deserve further study. S.2099 would mandate that domestic industry provide a detailed proposal of adjustment —— an industry blueprint on how to regain its competitiveness —— before relief could be granted. Current law requires the petitioning industry to include a statement describing "the specific purposes for which import relief is sought, . . ." but it does not exact a quid pro quo from domestic industry. Too often in the recent past industries receiving protection from import competition in one form or another have done little to become competitive except to raise their prices, costing the U.S. consumer millions. The purpose of Section 201 is and should continue to be to provide a temporary period of adjustment to, not protection from, imported goods.

A specifically provided-for remedy hearing, as proposed in S.2099, also has some merit. Such a hearing, after a finding of injury by the ITC, would allow the involved parties to fully assess the benefits of or drawbacks to the available import relief. Currently, the ITC has the discretion to decide whether to hold a remedy hearing and whether to combine it with the hearing on injury (the latter of which has the practical effect of presupposing injury to the domestic industry).

A third provision of S.2099 that AAEI believes deserves further consideration is allowing the President the option of granting a time-limited antitrust exemption to the domestic industry found to be suffering injury from imports, as long as other import relief is precluded.

In conclusion, section 201 cannot be allowed to become an easy tool for domestic industries to insulate themselves from the hard choices of competition. Industry in America does not exist in a vacuum. The President must be allowed to weigh the narrow benefits of import relief for one industry against the cost to the entire nation. Pursuant to our international obligations, relief granted to one industry from fairly traded imports must be compensated for by a reduction in tariffs on other products from countries whose trade will be affected by the import relief. And, as evidenced by the recent case involving Canadian wood shakes and shingles, U.S. exporters can be harmed by retaliation resulting from a section 201 case as well.

AAEI believes that the enactment of S.2099 or S.1863, singly or as part of an omnibus trade bill, would benefit the few at the great expense of many.

Thank you.

Senator HEINZ. Jeff, thank you very much.

Let me ask, starting with Mr. McCarthy, isn't any import relief, any at all granted under 201, going to impose some kind of cost on consumers?

Mr. MCCARTHY. There is no question but it will, because any time you restrict a supply, the cost goes up, not only for the imported product but the domestic manufacturers follow suit and the prices go up for all cars.

Senator HEINZ. Do you agree, Miss Melrose?

Ms. MELROSE. Oh, of course.

Senator HEINZ. Mr. Bialos?

Mr. BIALOS. Yes, without question.

Senator HEINZ. Well, is that in and of itself a valid reason for denying import relief?

Mr. MCCARTHY. I don't think that in and of itself is a valid reason, but that is why we insist that the President be permitted to retain that discretion. If the ITC comes down with recommended relief then the President can weigh the cost of this relief on the entire U.S. economy and consumers to decide whether it should be granted.

Senator HEINZ. I gather you generally agree, Miss Melrose.

Ms. MELROSE. I agree.

Mr. BIALOS. I think what you have to recognize here, Senator, is that we are not talking about an unfair trade practice. It is one thing in a dumping case where there is a finding of an unfair practice to have an automatic type of remedy. It is another thing in this kind of a proceeding where what happens abroad is not necessarily unfair. And it relates to some competitive industry that is selling in the United States and it could be some kind of inefficient domestic industry. And in that context, it is important that the President have the discretion to weigh the cost to the consumers against whatever narrow benefits there might be to the domestic industry seeking protection.

Senator HEINZ. The concept behind the adjustment, the notion of the adjustment plan, is to capture the benefit of protection for somebody other than the constituents of the affected industry in terms of labor, management and shareholders. The notion of an adjustment plan is to say you are getting the equivalent of a million dollar's worth of import relief and we want it to be invested in a more competitive industry, which over the long term, is going to benefit consumers. Is that a legitimate concept?

Ms. MELROSE. Mr. Chairman, I am concerned that a company have the incentive to readjust. Granting relief does not provide the incentive. They need some push to force them to streamline, to modernize.

Senator HEINZ. Well, don't they have that push right now, which is called survival? Aren't we talking about industries that are already, as Harley Davidson testified to, doing everything they can to survive. But they did not have the cash flow, the capital formation ability, to make the investments to become more competitive to survive. Isn't that what we are really talking about?

Ms. MELROSE. There needs to be something.

Senator HEINZ. Well, how about this. If there is an objection here that I detect to the Senate's provision—and there may be others—

but one objection seems to be, well, won't this just be a way of industries that aren't doing enough for themselves already, coming in and asking for help? I mean, isn't that part of the objection here?

Mr. McCarthy. We don't limit our objection to that.

Senator Heinz. I know you don't limit it, but isn't that part of it?

Mr. McCarthy. That is part of it. Our point is, when the affected industry comes in—kind of self-serving and comes up with a program, this should not automatically be triggered as relief. The adjustment assistance may be a viable program, but it should not be automatic. It should be something the President could override.

Senator Heinz. If the industry could show, for example, that there was no way they could survive because they just could not generate the capital they needed to make the investment they had to have in order to become more competitive, then would it make sense to substantially curtail the President's discretion as long as the industry also demonstrated they could succeed with their adjustment plan?

Mr. McCarthy. Well, I think it is so difficult for a failing industry to come up with a plan to demonstrate that it for certain can succeed. There is a matter of judgment involved. And, therefore, we do not think that the President should be forced to accept the adjustment assistance plan automatically 'He should have some discretion.

Senator Heinz. Doesn't the International Trade Commission have a very important role in making that judgment?

Mr. McCarthy. We think they do, because they, during the course of the hearings, learn a great deal about that industry and it would be able to contribute, yes.

Senator Heinz. Well, under S. 1863, they are required, often a consultative process that includes the administration—involves the Department of Commerce and other players—to pass judgment on an adjustment plan.

It is not as if the President's people are not involved—after all, the people who are involved with the ITC and in consultation on the plan, in fact, are the people who will advise the President.

Mr. McCarthy. We think that is extremely helpful to the President. But, once again, their judgment is limited to the effectiveness of that plan on that specific industry and does not carry over to the cost of the plan to other consumers to the other domestic industries, and so forth.

Senator Heinz. Let me ask a question about a more liberal antitrust policy as a tool here, which you mentioned, Miss Melrose.

If an industry were really to commit to very dramatic across the board kinds of changes, first, could they really do it without some kind of antitrust liberalization or exemption?

Ms. Melrose. They feared that they have not been able to—it is that fear of being brought to court under the antitrust laws that companies have not pursued the idea of merging.

Senator Heinz. Because they are afraid of antitrust problems?

Ms. Melrose. That is right.

Senator Heinz. And that is a real problem, you think?

Ms. Melrose. I think it is.

Senator Heinz. Do you agree, Mr. Bialos?

Mr. **Bialos**. I think that you will never get rid of some level of risk. The application of the antitrust laws is not black and white in these situations. So, yes, I do.

Senator **Heinz**. And since you cannot eliminate the risk, there is more risk under current law than there is under proposals to liberalize, and there is more uncertainty, and, therefore, there is less chance of that happening.

Mr. **Bialos**. I think the antitrust exemption is certainly something worth considering.

Senator **Heinz**. Could antitrust law changes alone provide the necessary tool for adjustment for troubled industries?

Ms. **Melrose**. I think it is up to the President to decide for each specific case, whether that might be the best option.

Senator **Heinz**. That may be, but I am really asking—I did not make my question clear.

If all the Congress did was to say we are going to repeal 201, and antitrust law liberalization is the answer to these industries 'problems—whether it is the auto industry or the steel industry would an antitrust exemption be a sufficient lever for those industries to adjust to competition if they had no access to import relief under any circumstances?

Ms. **Melrose**. Representing Citizens for Sound Economy, we would be against any tariff, quota restrictions.

Senator **Heinz**. You want to repeal section 201.

Ms. **Melrose**. Theoretically that is how I feel.

Senator **Heinz**. You want to repeal the antidumping and countervailing duty laws too?

Ms. **Melrose**. I certainly recognize the political considerations of such action.

Senator **Heinz**. I am asking for the position of your group. I would like to know where it stands. Are you for repealing the antidumping and countervailing duty laws?

Ms. **Melrose**. Probably.

Senator **Heinz**. I will put you down as undecided.

I may have some additional questions for all of you. Thank you for your responses. We appreciate your testimony.

[Whereupon, at 12:22 p.m., the hearing was concluded.]

[By direction of the chairman the following communications were made a part of the hearing record:]

SUBMISSION OF THE AUTOMOBILE IMPORTERS OF AMERICA
ON
PROPOSED PROTECTIONIST AMENDMENTS TO THE ESCAPE CLAUSE

Proposed Amendments

A number of bills have been introduced that would amend various trade laws. Three, in particular, would make major and protectionist changes in what is called the escape clause - sections 201-203 of the Trade Act of 1974 (19 U.S.C. 2251-53).

The escape clause permits relief from serious injury caused by import competition. No "unfair practices," such as dumping or subsidies, are involved - just an increase in imports which is a substantial cause of serious injury. Upon an affirmative finding by the United States International Trade Commission (USITC), the President may impose duties, quotas, or any other kind of import relief. Alternatively, he may provide no relief.

Bills introduced by House Minority Leader Michel (H.R. 3522), House Commerce Committee Chairman Dingell (H.R. 3777), and Senate Trade Subcommittee Chairman Danforth (S. 1860) would each amend section 201 to make import restrictions more readily available to domestic petitioners. The most protectionist provisions of these bills would (1) transfer the import-restriction authority from the President to the U.S. Trade Representative (USTR); (2) lower the required causal relationship between increased imports and serious injury; (3) allow restriction of imports during the section 201 proceeding at the USITC; and (4) automatically require restriction of imports if there was an affirmative USITC determination and the petitioning industry had proposed, and the USITC approved, ~~an~~ adjustment plan.

The following discusses our objections to these proposed amendments. Other provisions which , if enacted, would have a protectionist impact will be briefly discussed at the close of this paper.

Transfer of Authority to USTR

The Michel and Dingell bills would transfer from the President to the USTR the authority to impose import restrictions after an affirmative determination of the USITC. This would make the escape clause process even more susceptible to political, i.e., Congressional, pressure. Under the escape clause, the President may reject import relief if he finds that it would not be in the national interest. The President is fully capable of taking into account the broad range of considerations (e.g. mutual defense relationships) that fall within this concept. The USTR, on the other hand, deals only with trade issues and has little or no competence to evaluate the entirety of the national interest. This would render the USTR far less able to resist Congressional demands for import relief. Moreover, the USTR has little bargaining power with the Congress, but must work closely with the House Ways and Means and Senate Finance Committees. These committees are in a far stronger position to exert pressure on the USTR than on the President. In short, such a transfer of authority is likely to lead to and precipitate ill-considered import restrictions.

Causation Requirement

For the USITC to make an affirmative determination under section 201, the increased imports must be "a substantial cause" of serious injury or threat of injury to the domestic industry. The present law provides that "substantial cause means a cause which is important and not less than any other cause." This requirement has resulted in a number of negative USITC determinations on the basis that, although the domestic industry was suffering serious injury, a cause other than imports was more responsible. This was the result of the 1980 escape-clause case concerning automobiles. The USITC found a shift in demand to be more responsible for the industry's plight than import competition.

The Dingell bill would change the definition of substantial cause to "a cause." This would lower the causation requirement from the escape clause: if increased imports and serious injury were both present, then it could follow that such imports would be an important cause - even if slight. But under such circumstances import relief could be contrary to the national interest and even unhelpful to the domestic industry, i.e., if the real cause of the injury were more important than the increased imports. A rational foreign trade policy must be able to take such other causes into account if it is to avoid blind protectionism.

Interim Import Relief

The Michel, Dingell, and Danforth bills would each require the Executive Branch to impose interim import relief during the USITC proceeding if certain circumstances are found. These circumstances are determined to exist if the failure to provide such interim relief would cause damage to the domestic industry that would be difficult to repair. However, no objective criteria are set forth with which to make that determination.

The Michel and Dingell bills would impose this requirement upon the USTR, and the Danforth bill upon the President. The danger in this amendment is twofold. First, it is entirely a matter of speculation whether the failure to provide interim relief would or would not result in damage to the domestic industry that would be difficult to repair. The lack of objective criteria would further risk the "politicizing" of the escape clause. Second, if interim relief were provided, it could not fail but prejudice the USITC's determination. The USITC could not make a wholly objective determination but would have to weigh the economic and political consequences of a termination of the interim relief if it made a negative determination. Such a result would run directly counter to the statutory requirement that the President consider consumer interests and the country's international economic interests before he imposes import relief.

Automaticity

The Danforth bill would require the President to impose import restrictions in all cases in which there is an affirmative determination and the petitioning industry has proposed an adjustment plan. This would eliminate the President's ability to reject recommended import reductions on the ground that they would not be in the national economic interest.

Other Provisions

In those cases in which the USITC finding is affirmative, both the Dingell and Danforth bills would require - and not simply authorize - the USITC to recommend import restrictions rather than adjustment assistance, thus substantially reducing the President's options.

Both the Dingell and Danforth bills would limit the USITC's consideration of the domestic industry's profitability to the profitability of only the industry's domestic production facilities. In other words, the USITC would be barred from investigating the degree to which captive imports contribute to the profitability of the domestic industry. Such a ban ignores commercial realities. In the recent escape-clause case concerning nonrubber footwear, the President rejected import relief in part because the larger, more efficient producers were filling out their product lines with imports to respond to rapidly changing consumer tastes.

The Dingell bill would permit petitioners under section 201 to include the producers of materials, parts, components, or subassemblies for a domestic product. Again, such an amendment reflects a distorted view of the marketplace. For example, U.S. automobile parts manufacturers would be able to request an escape-clause investigation of imports of completed automobiles.

Attached is a chart comparing the principal provisions affecting the escape clause of the Michel, Dingell and Danforth bills.

Conclusion

The amendments to the escape clause proposed by Representatives Michel and Dingell and Senator Danforth are strongly protectionist. They would restrict the present authority of the President to take into account the nations's overall economic interest. They would effectively remove the requirement of a finding that increased imports cause or threaten to cause serious injury before the USITC recommends relief. They would require the USTR or the President to restrict or bar imports in some cases before the USITC determines whether injury exists. These and other protectionist provisions would turn the escape clause into a crude instrument for protectionist forces to thwart the public's interest in a freer, more competitive world market.

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May 28, 1986

The Honorable John C. Danforth
Chairman
Subcommittee on International Trade
U.S. Senate Committee on Finance
U.S. Senate
SD-219 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

We represent and are writing on behalf of the Auto Internacional Association (the "Association"). The Association is an industry group representing over three hundred importers, exporters, manufacturers and distributors of parts and accessories for imported motor vehicles. The industry supports over one hundred thousand (100,000) Americans. We appreciate the opportunity to submit this testimony concerning S. 1860, the "Trade Enhancement Act." We request that this testimony be made a part of the record of the hearings on this Bill.

The Association is a supporter of free trade among and between the United States and its trading partners. In the past we have supported the devaluation of the dollar. We also support any program which will fairly enhance the competitiveness of United States' industries. The trade deficit remains a problem. The present Administration has, however, succeeded in slowing the trade deficit through sound fiscal policy and negotiation. The Administration has not resorted to the creation of barriers except in those instances where unfair competition has clearly been shown. We support those portions of the Bill which grant authority to launch worldwide trade liberalization talks and the new standards to assess unfair trading by socialist countries.

We are concerned, however, over certain portions of the Bill which is being considered by your Subcommittee. The first area of concern is the removal of certain flexibility in the foreign trade area which has traditionally been accorded the President. Decisions regarding international trade cannot be made without consideration of national security interests and have generally been made by the President or those to whom he delegates authority. It seems to us unnecessary and possibly counter-productive to mandate by law the delegation of that Presidential authority to the Trade Representative. This legislative delegation seems designed to undercut useful communications between officials with differing expertise in the executive branch. The President must be given the latitude necessary to fully consider all sides of an issue instead of being required to retaliate or grant protection to certain domestic industries.

The Association is concerned that the Bill may open a floodgate of cases before the International Trade Commission by lessening the standard upon which relief from imports may be granted and by lessening the authority of the President. Imports should be both a substantial and a primary cause of injury before relief is granted. Further, the present procedure is adequate for redressing unfair competition. The Association supports the current standard and procedure. To change will not increase productivity. Instead, it will increase the price of goods to U.S. consumers, monopolize the U.S. market in certain industries, and remove an important incentive for U.S. industry to become more efficient. This will in turn invite interference with the activities of the import industry, as well as with our international trade policies.

The Association opposes proposed Section 405 of the Bill entitled "Authority to impose or increase duties in lieu of quotas and to auction import licenses." The sale of import licenses at public auction will disrupt the industry represented by the Association for no apparent reason. Further, the Association is composed of small businesses who may not have the wherewithal to compete in a public auction of the type suggested by the Bill. This provision is plainly anti-small business and would be both bad law and bad policy. It would suppress competition and increase the cost of goods to the American public.

Finally, the Association is concerned about certain aspects of Title VIII regarding intellectual property rights. We are concerned that the Bill will foreclose an important avenue of competition, that of parallel importation of original goods. The Association supports reasonable measures to curtail the importation of counterfeit goods. Original products which are imported through parallel trading channels, however, should not be considered an unfair trading practice. Instead, they offer fair competition to benefit the American consumer. Title VIII should be clarified to allow parallel importation of original goods.

Based on the foregoing reasons, we urge your Subcommittee to amend the draft in the fashion requested in this letter. Specifically, we would urge you to maintain executive flexibility in this area and to leave intact the existing standard for import relief.

Sincerely,

John Russell Deane

JOHN RUSSELL DEANE III

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Statement
to the
Senate Finance Committee
on Trade Issues Raised by S. 1860

by

Thomas L. Hughes

President, Association of American
Chambers of Commerce in Latin America

July 3, 1986

Statement

The Association of American Chambers of Commerce in Latin America (AACCLA) is pleased to have the opportunity to present its veiws on proposals for omnibus trade legislation. The opportunity you have granted this Association over the years to present its views on topics of concern to member Chambers of Commerce is very much appreciated.

Since 1967 AACCLA has acted as a clearinghouse for information and as a coordinator for programs of common interest to the twenty-one individual American Chambers of Commerce (AmChams) located throughout this hemisphere. These AmChams, representing the American business community in their respective countries, are important to the United States. They represent 18,000 individuals and companies actively engaged in expanding trade and investment between the U.S. and Latin America. In their local communities they also serve as a window to American ideas and practices.

AACCLA proposes in this submission to describe the general perspective from which it analyzes trade legislation and then comment on specific ideas under consideration. We will comment both on provisions contained in H.R. 4800 (To enhance the competitiveness of American industry) recently sent to the Senate for consideration and other provisions which your committee may be considering.

AACCLA views this proposed trade legislation from the perspective of trade between the United States and Latin America. AACCLA's Board of Directors believes that the legislative and executive branches of the U.S. Government should, in formulating and implementing legislation affecting international trade and investment, take into account the special commercial relationships which have always existed between the United States and the Latin American nations, the traditional predominance of U.S. goods in Latin American markets, the importance to the United States of having friendly prosperous and democratic governments in its neighbors to the south, and the desirability of assisting the Latin American countries in servicing the heavy burden of the debt which they owe to the U.S. and to banks.

It is, therefore, very important in our view that the United States encourage liberal access to its markets for its neighbors to the south. There are sound reasons for this.

First, it is in American interest that Latin America earn the foreign exchange necessary to service its foreign debt. Without delving into how and why the U.S. banking community extended credit to Latin America, the fact remains that we as Americans can not now realistically expect Latin American countries to reform their economic policies, adopt measures of austerity and faithfully meet their international debt obligations while restricting access for their exports to our market. Progress has been made in coping with the burden of debt, but the problem remains. The best assurance for continued progress is continued economic growth and expanded export earnings for the countries concerned.

One of the effects of the debt crisis has been the necessity of many Latin American countries to undergo economic adjustment programs designed to improve foreign exchange earnings. Evidence of their success has been that in 1985 Latin America achieved an estimated $25.4 billion surplus in its international trade. Unfortunately, much of this was achieved through reductions in imports.

Of greater importance is the fact that the United States is the principal market for Latin American exports, accounting for 47 percent of the $103.5 billion exported in 1985. Viewed from the perspective of the United States, imports from Latin America declined by two percent in 1985, compared to an increase of seven percent in imports from the rest of the world. Declining imports can largely be explained by declining petroleum prices. The closing of one refinery in the Netherlands Antilles, for example, was the single most important cause of the decline of U.S. imports from the Caribbean Basin countries, aggravated to a degree by reductions in the import quotas for sugar.

Trends in international trade for Latin America in 1986 are mixed. Declining petroleum prices are seriously reducing export earnings for countries like Mexico, Venezuela, Ecuador and Peru, but easing import costs for consuming countries like Brazil and most of the Caribbean Basin states. Rising coffee prices have helped some, but not Brazil as drought there is the cause of the price increase. In sum, it remains clear that Latin American countries have not been particularly successful in getting away from reliance on a few basic commodities for the bulk of their export earnings and that access to the U.S. market is crucial to their ability to fund their international debt and to promote economic development.

A second reason to support liberal access for Latin American countries to the American market is their higher propensity relative to other geographic regions to import goods and services from the United States. Thus increased export earnings on the part of Latin American countries are more likely to result in increased imports from the U.S. than would be the case of other regions. Further, U.S. export industries tend to be the most efficient within our economy so that expanding sales not only benefits the U.S. balance of payments, but U.S. productivity and international competitiveness.

To illustrate, while total 1985 Latin American imports increased by one percent, imports from the United States increased by four percent, reaching a total of $30.1 billion, 36 percent of total imports into the region. Latin America now takes 14 percent of all U.S. exports. Incidentally, this increase in U.S. exports to Latin America took place in a year in which U.S. exports to the rest of the world declined by three percent.

A third reason to support liberal market access is that our strong interest in Latin American progress toward social justice, democratic institutions and political stability will not be met in the absence of sustained economic growth. It is clear from events since World War II that there is a strong correlation between export expansion and economic growth. Denying Latin America adequate access to the U.S. market for its exports is in effect to deny it a chance to achieve desperately needed economic growth.

Moving to a more global perspective, AACCLA shares the concern of this committee with the extraordinarily large current account deficit now experienced by the United States. It is our view that this situation reflects a series of macroeconomic factors and is not due to specific trade policy defects or shortcomings. We are pleased at the progress the Administration and the Congress have made in recent months to bring the trade deficit under control. Success is not yet at hand, but the projections are favorable. AACCLA does not believe that this is the time to interfere through ill-conceived, protectionist actions.

AACCLA also believes that steps taken by the Congress and the Administration to reduce the U.S. federal budget deficit have begun to bear fruit. The perception that both Congress and the Administration are serious in their attention to these matters is reflected in dampened inflationary expectations and lowered interest rates. It is our hope as well that reduction of the Government's need to borrow will contribute to more readily available capital for private sector investment and thus to improved U.S. productivity. Without commenting on specific measures, we would like to stress that in our judgement these efforts must continue.

As a consequence of the concerted action of the U.S. and its principal economic partners, the value of the U.S. dollar in terms of major currencies has declined. Owing to normal lags involved in trade transactions, it will be many months before the full impact of the lower valued dollar will be felt, but we look to increased competitiveness of American exports to Latin America relative to those from Europe or Japan in the months to come.

AACCLA is also pleased to note increasing recognition that policies which lead to economic growth for developing countries benefit the United States. We believe that greater availability of financing through the coordinated approach of the World Bank, the International Monetary Fund and private U.S. banks as outlined in the plan developed by Treasury Secretary Baker can prove a very positive development.

This approach fortunately seems to have supplanted an earlier approach under which the financial community in developed countries and the IMF relied exclusively on severe austerity programs in countries with heavy foreign indebtedness to reduce balance of payments deficits and the need for additional loans. As part of this austerity approach we have seen severe reductions in the ability of most Latin American countries to import from abroad. Additional resources made available to these countries will help produce domestic investment and expanded economic activity with resultant beneficial effects for social progress and political stability. And, of interest to the U.S., an enhanced need for and ability to finance imports of U.S. goods and services. The lack of available foreign exchange also impedes trade liberalization since debtor countries cannot afford the resulting increase in imports. We support the development of a mechanism to allow an increase in resources for Latin debtors to enable them to finance increased imports arising from trade liberalization. Higher levels of trade can only be helpful to both parties.

AACCLA would like also to go on record in support of the President's international investment policy. The principle that American investors abroad should receive the same fair and nondiscriminatory treatment that foreign investors find in the United States is a basic tenet of our Association. The 1984 modifications to section 301 provide sufficient authority for the Administration to pursue "national treatment" for U.S. investment abroad.

We support liberalization of trade-related investment in developing countries. AACCLA members are concerned over the practice in many Latin American countries requiring export performance, local content, mandatory joint ventures and other burdensome or discriminatory policies, but believe that negotiations to overcome these should be carried out on a multilateral and, where appropriate, on a bilateral basis with careful consideration given to the potential impact of such negotiations on the interests of U.S.-owned or affiliated companies already operating in or considering entering the country in question. AACCLA does not see the need for further specific legislation at this time, but will continue to watch closely the impact of Administration implementation of its policy.

We strongly support a new round of multilateral trade negotiations. Trade negotiations serve two purposes. First, they give momentum toward further trade liberalization. Despite the vision of the GATT founders of a free flow of trade, many barriers still remain. While average tariff rates are low, some specific rates are sufficiently high to warrant further reduction so as to expand trade. Attempts to deal with non-tariff barriers to trade, begun in previous multilateral negotiations, must be continued as further progress is required. Second, the GATT should also be broadened to cover such new areas as intellectual property rights, trade in services, trade related investment and trade in high technology products.

We believe that the type of negotiating authority provided in the Tokyo round remains appropriate. It required close consultation with the private sector and the Congress, provided executive discretion in reducing tariffs up to set limits and provided for expedited Congressional approval of agreements when and as reached. Basically, this form of authority provided the needed assurance to America's trading partners for serious negotiation.

AACCLA also urges that bilateral negotiating authority be maintained, since this offers the possibility for progress on trade issues complementary to the multilateral negotiations and could be particularly useful in relation to Latin America. Examples of these possibilities included the Caribbean Basin Initiative and the Free Trade Area agreement with Israel.

AACCLA also supports proposals designed to improve the general competitiveness of U.S. exports. Some of the measures have been a long time in coming and are needed now. These measures include:

1. Modification of the Foreign Corrupt Practices Act (FCPA). We oppose corruption, but the FCPA places unclear and unrealistically high standards on U.S. business, resulting in a competitive disadvantage relative to foreign business, and is unclear in part, leaving American companies open to prosecution depending upon interpretation of the Act. AACCLA supports congressional efforts to clarify ambiguities in the current law. At the same time, we would like to see that issue addressed as a multilateral agreement which would adopt and enforce realistic standards and procedures to ensure that action would be taken against those who solicit payments as well as those who make them.

2. More effective protection of U.S. intellectual property rights through modernization of U.S. law to better combat the problem of counterfeiting and patent infringement including enhanced coverage of software and genetic materials.

3. Creation of an export "war chest" to enable U.S. exporters to compete in situations where foreign governments have provided excessive export credit subsidies.

From the unique perspective of AACCLA, we are concerned with a number of proposals mentioned in connection with an omnibus trade bill. Many of the objectionable proposals are embodied in H.R. 4800. The bill also contains some positive proposals. We are concerned also with some other proposals which are under consideration in the Senate but not included in H.R. 4800. This is not an exhaustive list, and we plan to monitor developments closely so that should it become appropriate to comment on other specific proposals, we will express these new concerns.

For example, we strongly support the system of checks and balances inherent in the current U.S. system. Interagency consideration coordinated by USTR assures that any decision on trade or trade policy is viewed in all of its implications. Thus a decision to close U.S. markets to any imports must take into account a range of American interests such as the effect on U.S. competitiveness (Council of Economic Advisors), foreign exchange earnings of the larger debtor nations (Treasury), the attainment of U.S. foreign economic objectives (State), and the potential for trade retaliation (USTR). The President's role as overseer of the "overall national interest" should be maintained. We oppose proposals in the House bill to reduce the role of the President and of agencies other than USTR in the decision making process.

We have stated our concern over possible U.S. actions in violation of the GATT. We strongly support efforts to improve GATT's dispute settlement mechanisms so as to produce prompt decisions and clear statements of what is or is not permitted under the GATT. Such improvement will not be either quick or simple and the U.S. should allow adequate time for negotiations to bring about the desired changes. AACCLA opposes the concept that the U.S. should take upon itself the responsibility to judge whether actions of other countries violate GATT rules and are subject to retaliatory action. This offers a dangerous precedent which could result in U.S. trading partners passing similar judgment on U.S. exports and to an overall breakdown of the multilateral system built up painstakingly since World War II. We therefore oppose those provisions in H.R. 4800 which are in violation of our GATT obligations or which require action before the GATT Dispute Settlement mechanism has had a reasonable opporunity to function.

We are concerned with proposals to require unilateral Presidential action against countries with allegedly unwarranted trade surpluses. Such provisions violate GATT, do not allow the forces of competitive advantage to play a role and do not recognize the responsibility of the U.S. to maintain its own competitive edge. Even though countries with balance of payments difficulties are subject to less stringent offsetting measures, they are still covered by the basic provisions. Unilateral restrictions and excessive concern about bilateral trade deficits could also undermine the multilateral system.

We are concenred with other proposals to increase the scope of U.S. trade statutes by defining actions consistent with GATT rules as requiring automatic countermeasurers under U.S. unfair trade laws. Such changes, we wish to repeat, place U.S. exporters in jeopardy and make U.S. insistance that others adhere to international rules all the more difficult.

AACCLA is particularly concerned about one such proposal in the House bill. This would subject to U.S. countervailing duty statutes certain imports produced with low priced energy or other primary product inputs. This would be a clear GATT violation. It would have a heavily negative impact on the export industries of Mexico and possibly Venezuela depending on the wording of the final bill. It would also create troublesome possibilities of retaliation against U.S. exports if U.S. trading partners chose to apply the same criteria.

We are also concerned about proposals in the House bill to shorten the time periods and otherwise accelerate decisions in trade policy cases. Current time periods and decision points represent in our view an acceptable balance between the needs of petitioners for prompt relief and the needs of foreign defendants to prepare replies to these charges.

We are concerned about proposals to allow for provisional relief in escape clause cases. The record des not bear out the contention that during the period of consideration, imports come in at such levels as to cause irreparable damage to the petitioning industry and its workers. This, too, would be a violation of the GATT. Perhaps a better remedy in escape clause cases would be modernization of U.S. antitrust legislation, particularly with respect to permitting cooperative action by industry members severely affected by imports. The existence of strong foreign competition assures that the U.S. consumer will not suffer from cooperative efforts on the part on an embattled domestic industry.

An especially serious threat to Mexico and other Latin American exporters of fruits and vegetables is the so-called fast track relief for perishable products. Under the House bill, escape clause relief could be imposed within twenty-one days of a complaint without even a USITC injury finding, based on very scanty evidence of market disruption and without consideration of factors normally required in escape clause proceedings, such as the interests of consumers and of the overall national economy. Although these proposals purport to be modeled after provisions in U.S. duty free programs, such as the Caribbean Basin Economic Recovery Act and the U.S.-Israel Free Trade Area Agreement, they ignore the fact that in these two acts relief is limited to restoration of normal U.S. tariff rates. What is proposed is the potential imposition of quantitative restraints without adequate consideration of all the factors involved.

We oppose sectoral protection, whether for textiles, footwear or copper. Current trade laws provide an opportunity for remedy. If specific industry requests for relief are turned down by the agencies charged with this responsibility, there should be no special legislative remedies to the detriment of overall U.S. interests and in violation of international rules.

One sectoral-specific provision in the House bill involves tighter administration of the textile program. Whatever growth there has been in U.S. textile imports, and this growth is slowing down, has come from developed countries not covered by the MFA. Little real assistance to the industry would be provided from the application of stricter quotas under the MFA to Latin American textiles imports into the United States.

Finally, we are concerned with proposals designed to remove countries from GSP eligibility. We believe these proposals violate the spirit of the Trade and Tariff Act of 1984 which provided that the more advanced developing countries would retain eligibility, and even possibly expanded consideration, under GSP, in exchange for willingness to open their markets further to American products, services and invesments. Many current proposals ignore this trade off, seeking to "graduate" countries like Brazil and Mexico, reducing international market access rather than expanding it.

In this regard, we have taken note of the proposal in the House bill to shift GSP benefits from advanced Far Eastern newly industrialized countries (NIC's) to Latin American debtor countries. Although we support this provision in principle, it would be much more beneficial for Latin America if limitations on product eligibility were relaxed as well.

We support most elements of the proposals for authority to carry out multilateral trade negotiations. In fact we are concerned only with one of the provisions, that requiring fast track Congressional approval of tariff reductions for products considered import sensitive in the context of GSP. This would establish a bad precedent for trade negotiations since current practice has been for Congress to preauthorize tariff concessions, subject only to private sector and USITC advice. Also, failure of Congress to ratify any concession could unravel the whole package.

There are many proposals before the Congress for unilateral steps to correct what are perceived as abuses in the international trading system harmful to U.S.exporters, including mechanisms established by U.S. trading partners in violation or outside the coverage of the GATT. In place of unilateral actions which could place the United States in violation of its GATT obligations, subject U.S. exports to retaliation and, more importantly, undercut U.S. credibility in arguing for observance of strict standards, we believe it would be more appropriate for Congress to demonstrate its concern by instructions to the Administration to treat these issues in the context of the MTN. In these cases, we support the expansion of the list of negotiating objectives for the MTN.

The House bill also contains provisions designed to increase the competitiveness of U.S. exports and investment. These cover the enhancement of exports through liberalizing export controls, promoting exports and protecting U.S. business interests abroad;

improvement in protection of intellectual property rights; clarification of foreign corrupt practice provisions; provision of increased resouces to debt-ridden countries willing to liberalize entry for imports or improve their climate for foreign investment; and approval of the Multilateral Investment Guarantee Agency (MIGA). In principle, we support the objectives of these proposals.

We hope the Finance committee and other appropriate Senate committees will give consideration to these many areas while bearing in mind our concerns. Some of the proposals, in addition to other negative effects, would have a disasterous impact on Latin American efforts to resume self-sustained growth through reliance on market forces, to deal responsibly with the debt burden and to provide an expanding market for U.S. exports. We look to the Senate to weigh carefully American international interests in their totality in its consideration of this legislation, even if this should result in postponement of action until the next session.

Thank you.

0127M

STATEMENT OF COUNSEL FOR U.S. SUZUKI MOTOR CORPORATION
BEFORE THE COMMITTEE ON FINANCE
UNITED STATES SENATE

July 31, 1986

We are Harry W. Cladouhos and John H. Korns, attorneys in Washington, D.C. with the law firm of Pettit & Martin. We are counsel to U.S. Suzuki Motor Corporation. In connection with hearings on proposed legislation relating to import relief and adjustment policy, this Committee on July 17 received testimony from Vaughn L. Beals, Chairman of Harley-Davidson, Inc., which is a receipient of import relief under section 201 of the Trade Act of 1974. Our client, U.S. Suzuki Motor Corporation, was adversely impacted by that relief and we would like to submit these comments in connection with several of the points made by Mr. Beals. In particular, we see no basis for an amendment to the law, as advocated by Mr. Beals, to allow extension of import relief to products falling outside the industry within which injury or threat of injury to a domestic producer has been found.

I. Background

In February 1983, as a result of a petition filed under Section 201(a)(1) of the Trade Act of 1974 (19 U.S.C. § 2251(a)(1)) by Harley-Davidson, the U.S. International Trade Commission ("ITC" or "Commission") found an absence of serious injury caused by increased imports. However, the ITC did find that imports of heavyweight motorcycles (i.e., motorcycles having engine displacement of over 700cc) were a substantial cause of a threat of serious injury to the domestic industry. The Commission's finding was based upon the unprecedentedly high inventory levels reached in 1982 by heavyweight motorcycles imported from Japan. This occurred because of unique competitive circumstances and an unexpected decrease in demand. The Commission was concerned that, under pressure of continued imports, the existence of this unusually large inventory "overhanging the market" might result in price cutting (i.e., a "fire sale"), as importers and import dealers attempted to reduce inventory to make room for newer models. Such an inventory reduction might, the Commission feared, reduce or eliminate the U.S. industry's -- and especially Harley-Davidson's -- ability to operate at a profit.

In order to encourage an orderly liquidation of import inventory, without massive price cutting, the Commission recommended the imposition of an unprecedentedly high additional tariff -- 45 percent in the first year with declining rates at 35, 20, 15 and 10 percent, respectively, for the subsequent four years -- on imported heavyweight motorcycles. The purpose of the tariff was to raise the price of new imports in order to discourage additional imports which would put pressure on the importers and import dealers to sell off their huge inventory at deep discounts. President Reagan accepted the ITC's recommendation with one minor modification. In addition, the President ordered that the situation be kept under review so that, if the heavyweight motorcycle industry no longer needed such relief, the tariff could be reduced or eliminated.

The tariff went into effect on April 16, 1983, and we are now in the fourth year under the higher tariff.

II. Importation of Downsized Motorcycles Is Expected and Appropriate Commercial Behavior

In support of his suggestion of the need for an amendment to the law, Mr. Beals of Harley-Davidson asserted in his prepared testimony to this Committee that Harley has not received the full intended benefit of this import relief. This is because, he alleges, the Japanese motorcycle manufacturers have "evaded" the tariff by importing so called "tariff busters" -- motorcycles with engine displacements just below the lower limit covered by the section 201 tariff. While Harley's use of loaded words such as "evade" and "tariff busters" is designed to create antagonism to importers, a review of the situation shows that such a reaction is not justified.

First, and most important, Harley-Davidson has no equitable basis to complain about these reduced-displacement motorcycles. Harley-Davidson itself made the choice in the first instance, in its 1982 petition to the ITC, regarding how to define the U.S. industry which it alleged was being injured. Presumably it did so based on its own balancing of the scope of relief it wished to accomplish versus the industry within which it could hope to show significant injury or a threat of such. And, presumably, it also did so having in mind that a natural and predictable reaction of importers to the imposition of a tariff on products defined in a certain way is to redesign some of their products to fall outside the area covered by the tariff, to the benefit of consumers. Having these factors in mind, Harley-Davidson chose to define the industry on the basis of the volume of the motorcycle's total piston displacement, rather than on the basis of characteristics such as performance, styling and mechanics. And Harley-Davidson chose to define the industry as motorcycles having engine displacements over 700cc. We can assume that this is the broadest market within which Harley-Davidson felt it could establish a case for relief. Once having filed its petition -- and having received import relief -- on the basis of an industry definition of motorcycles over 700cc, Harley now is in no position to assert that Japanese manufacturers are acting improperly by importing motorcycles having piston displacements just below that industry definition.

Second, beyond the fact that Harley-Davidson must have calculated that it could not make a case for relief involving 700cc and lower displacement motorcycles, the ITC also recognized that even inclusion of models at the lower end of the industry that was covered by the heavyweight motorcycle import relief program (above 700cc) went beyond the market in which Harley-Davidson significantly competed. Harley-Davidson's motorcycles were all much larger. Thus Commissioner Stern wrote in her opinion in this case as follows:

> Although there is no clear, non-arbitrary dividing line within the heavyweight class, the record supports the conclusion that each motorcycle primarily competes within its own size range. [T]he domestic industry mainly produces motorcycles of 1000cc and over. . . . For example, imported 750cc motorcycles are only minimally competitive with domestically produced motorcycles.

Heavyweight Motorcycles, and Engine and Power Train Subassemblies Therefor, Report to the President on Investigation No. TA-201-47 of the Trade Act of 1974, USITC Pub. No. 1342 (February 1983) at 58 (emphasis added). Therefore, the reduced displacement motorcycles (with less displacement than even 750cc motorcycles) do not compete significantly, if at all, with the motorcycles manufactured by Harley-Davidson.

Third, it is broadly recognized by the courts that it is perfectly proper for a manufacturer to modify or design a product to achieve a customs classification resulting in a lower tariff. Thus one court has said the following:

> Generally speaking, the rule is well settled, having been often stated and approved by various courts, that an importer has the right to fashion his merchandise so that it shall be assessed with duty at the lowest rate.

See Michaelian & Kohlberg, Inc. v. United States, 22 C.C.P.A. (Customs) 551, T.D. 47554. And the Supreme Court has spoken to the same effect.

> [W]hen the article imported is not the article described as dutiable at a specified rate, it does not become dutiable under the description because it has been manufactured or prepared for the express purpose of being imported at a lower rate.

Merritt v. Welsh, 104 U.S. 694, 704. Thus, it is clear that it is perfectly proper for a manufacturer to modify a product to bring it within a lower-tariff customs classification.

Fourth, there is no indication that motorcycles below 700cc are relevant to the threat identified by the ITC. That threat was based on the huge inventory of over 700cc heavyweight motorcycles overhanging the market and the fear that if the level of imports was not reduced substantially they would put pressure on importers and dealers to dispose of inventory in a "fire sale." However, there is no basis to believe that the importation of reduced displacement models had any effect on the orderly disposition of the inventory. There was a period of delay, following the imposition of import relief, before these new models were introduced. There is no indication that their importation affected the disposition of the unusual inventory of older motorcycles of over 700cc, which has been fully accomplished in a noninjurious manner.

For these reasons, it is clear that Harley-Davidson had full opportunity under the current law to seek relief against imports competing with its products, that it is normal and legitimate commercial behavior to modify products to avoid heavy tariffs, and that such action does not undermine import relief because it occurs in products not directly in competition with the protected domestic industry. Thus it is clear that no amendment to the law along the lines suggested by Mr. Beals is appropriate.

In fact, the most important response to Harley-Davidson is that the importation of below 700cc motorcycles has not detracted at all from Harley-Davidson's ability to benefit from the tariff relief, as is reflected in the facts that the threat identified by the ITC has been eliminated and that Harley-Davidson has used the period of relief to substantially strengthen its product, its quality, its position in the market, its profits and its net worth.

III. The Period of Relief Has Seen an Elimination of Any Threat of Injury from Large Import Inventories

The large import inventories that existed in 1982 and that underlay the Commission's finding of a threat have been reduced to levels that are normal and that pose no threat whatsoever to the U.S. industry. Inventories in September 1982 (the most recent period for which the ITC had data when it made its decision in February 1983) held by both importers and import dealers totaled 205,214 units. The Commission contrasted this situation with the inventories that had existed in 1977-1979, a period during which imports were not causing or threatening to cause serious injury to the U.S. industry. It emphasized that 1982 total inventory of imported motorcycles was substantially higher than levels experienced during the normal 1977-1979 period. The Commission was particularly concerned that the large volume of imports and import inventories was growing at a time when overall demand in the United States for heavyweight motorcycles (of both imported and domestic origin) was actually declining.

Since the imposition of the special tariff, inventories of imported motorcycles have plunged to levels that pose no threat to the U.S. industry. According to annual Commission reports concerning heavyweight motorcycles, total combined importers' and import dealers' inventories have declined from a high of 228,029 units at the end of 1982 to 177,764 units at the end of 1983, 125,832 units at the end of 1984, and 81,236 units at the end of 1985. This represents a 64 percent reduction in total import inventories over the past three years. Because of this decline, import inventories have actually dropped below their noninjurious 1978 level of 102,765 units, and are substantially equivalent to the average for 1977-79. Thus it is clear that inventory levels have returned to a commercially reasonable and nonthreatening level.

These inventory reductions have taken place without causing price disruptions in the U.S. market, so that U.S. producers have been able to expand market share while simultaneously increasing their average prices and presumably their profitability. In fact, ITC quarterly reports show that the average retail sales price for imported motorcycles has risen steadily since the last quarter of 1982. Then, the average retail price was $2,747.00; by the end of 1985, it had increased to $3,939.00. Because of the reduction in inventories, the trend toward fewer imports of heavyweight motorcycles into the United States, and the effect of the appreciation of the Japanese yen, it is likely that this upward price trend will continue.

The decline in inventories has been accompanied by a drastic reduction in imports of heavyweight motorcycles. In 1982, annual imports totaled 224,000 units. In 1985, by contrast, only 34,922 units were imported. This comparison confirms the minor role that imports now play in the U.S. heavyweight motorcycle market and shows a strong desire by importers to avoid a repetition of the inventory overhang situation that developed in 1982.

The past three years have also seen a dramatic decline in market share held by imports. In September 1982, imports accounted for 70 percent of all U.S. heavyweight motorcycle registrations. Since that time, however, this situation has been virtually reversed because of the substantial increase in Harley-Davidson's market share and because two companies which formerly imported heavyweight motorcycles are now assembling them in the U.S. By the end of 1985, imports accounted for only 28 percent of U.S. registrations. As a result, imports no longer dominate the market but rather are dwarfed by sales of U.S.-manufactured motorcycles. Instead of threatening to further encroach upon the market segment held by U.S. producers, imports have suffered a major loss of market share and importers expect a continuation of that situation, as evidenced by the reduced volume of motorcycles that they enter into the U.S.

IV. The United States Heavyweight Motorcycle Industry has Returned to an Economically Healthy Condition

The U.S. heavyweight motorcycle industry is enjoying a period of profitability and expanded production. The three U.S. producers have increased their production, sales volume, prices, and market share for heavyweight motorcycles and, we believe, capacity utilization and employment, while inventories of U.S.-produced motorcycles have decreased. Harley-Davidson, especially, has become profitable and more competitive.

Harley-Davidson has worked down its break-even point to 35,000 motorcycles and has represented that as of the end of 1985 it is producing a total of at least 35,000 motorcycles per year (30,000 for the domestic market and 5000 for export). It has developed a number of advanced management and manufacturing techniques (some Japanese), has improved its facilities with computer-controlled and other automated equipment, has improved the reputation of its motorcycles for quality and has incorporated an increasing percentage of Japanese components in its motorcycles (a tenth of the value of its components were Japanese at the end of 1985). Further, in 1985 Harley introduced a new, smaller motorcycle, the Sportster 883 XLH. Its 883 cc engine and less-than-$4000 price are substantial changes for Harley-Davidson, and the 883 XLH is reported to be selling well. Additionally, in February 1984 Harley arranged for Ford Motor Credit Co. to provide financing services to purchasers of its motorcycles, as part of its effort to boost sales.

These developments have resulted in a substantial improvement in the company's market share. In 1983, Harley-Davidson accounted for 12 percent of the U.S. heavyweight motorcycle market, based on R.L. Polk registration statistics. Its share jumped to 19 percent in 1984 and 25 percent in 1985. In fact, *Cycle News*'s April 9, 1986 issue reported that Harley's President Vaughn Beals touted Harley's improved market position, as follows:

> Beals also told the press that Harley-Davidson remained second in the 1000cc and over segment of the market in 1985, with a greater share of the market than Yamaha, Kawasaki and Suzuki combined. According to Beals, the company moved into second in sales of machines 680cc and larger last year, and that Harley-Davidson sold more touring bikes than the combined sales of Yamaha Ventures, Suzuki Cavalcades and Kawasaki Voyagers combined. Beals said that February 1986 was the seventh consecutive month with Harley-Davidson retail sales ahead of the prior year, and that February 1986 sales showed a gain of almost 40% over February 1985. As Beals sees it, Harley-Davidson is doing well after nearly five tough years since a group of company executives led by Beals bought the company from AMF.

Additionally, not reflected in registration figures is the fact that Harley-Davidson appears to have regained its status as the pre-eminent police motorcycle in the U.S. For at least two years it has recapatured the role of providing police motorcycles for the California Highway Patrol, beating out Kawasaki's domestically produced police motorcycle. Harley's motorcycles now constitute 90 percent of the CHP fleet, and CHP's move back to Harley indicates that other police departments, which follow CHP's lead, either have bought or will buy Harley-Davidson motorcycles in the future. Harley-Davidson increased its sales of police motorcycles 300 percent just in the period February 1984 through January 1985.

Consistent with these developments, it appears that Harley-Davidson generally is operating at a profit and that its heavyweight motorcycle operations are also profitable. Harley built sales to about $300 million annually by 1985. Harley has operated at a profit since 1983 and Chairman Vaughn Beals has stated that he expects that the company will earn "significant" profits in 1986. Because of its positive cash flow and profitable operations, Harley-Davidson ended 1985 with a positive net worth. In fact, there has been a remarkable improvement in Harley's net worth over the past four years, as reflected below:

Year	Net Worth
1982	($21,975,000)
1983	($12,789,000)
1984	($6,323,000)
1985	$4,622,000

Thus it is clear that Harley-Davidson has recovered from its severe losses of 1981 and 1982, has earned profits in 1983, 1984, and 1985, and has vastly improved its net worth position.

Reflecting its across-the-board improved situation, Harley-Davidson is now in the midst of two substantial public securities offerings. It has issued a final prospectus for the sale of common stock to raise over $20 million. Concurrently, by separate prospectus, the company is offering $70 million in subordinated notes. These efforts can be expected to further boost Harley-Davidson's strength and improve its financial picture. The common stock prospectus is particularly interesting because in it Harley-Davidson indicates that the heavyweight motorcycle tariff has not been responsible for its success and notes specifically that its market share has increased as the tariff has declined.

In light of the developments discussed above, we submit that the import relief put into effect in 1983 is no longer justified. It must be kept in mind that the ITC made no finding that increased imports actually caused injury to the domestic industry, and therefore continuation of import relief is not justified on the basis of compensating for past injury. The Commission's finding was limited to a conclusion that the increased imports, at a time of unprecedentedly high import inventories, only threatened to cause substantial injury to the domestic industry in the future. It recommended, and the President adopted, import relief not to overcome or compensate for any actual injury, but only for the limited purpose of preventing the threat from actually inflicting injury.

The developments over the last three years, as described above, demonstrate that the threat relied upon by the ITC in 1983 has completely dissipated without inflicting any injury and that today there is no threat to the domestic industry. Imports are down substantially and inventories of imports are also down substantially, in line with the historical norm citied by the ITC. The domestic industry in general, and Harley-Davidson in particular, have enlarged their share of the market and improved their economic health.

Respectfully submitted,

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Statement submitted by David J. Steinberg, President, U.S. Council for an Open World Economy, to the Senate Committee on Finance in a hearing on proposals to reform the "escape clause" of the Trade Act of 1974. July 17, 1986

(The U.S. Council for an Open World Economy is a private, non-profit, public-interest organization engaged in research and public education on the merits and problems of developing an open international economic system in the overall national interest. The Council does not act on behalf of any "special interest".)

The intensity of current Congressional pressure for reform of Section 201 of the Trade Act of 1974 appears to stem from the President's refusal many months ago to restrict shoe imports despite a unanimous finding by the International Trade Commission that the U.S. shoe industry had suffered serious injury from imports. The President had indeed mishandled the shoe case -- not by denying import relief, but by denying the industry deserved responsiveness to the growing problems these producers are facing in an increasingly competitive world. Import restriction is not the President's only option. Having regarded import control in this case as harmful to the national interest, he should have shown an interest (a sincere one) in personally marshalling ideas from the industry, the labor representatives, and pertinent state and local governments, looking toward constructive attention to the adjustment needs of this industry (and the workers and communities dependent on it) without import restraint.

If I recall correctly, the President asked the Secretary of Labor to consult shoe-state governors on certain aspects of the adjustment question. But this fell far short of what the President himself should have done. For example, if he had proceeded immediately to invite the pertinent governors and mayors to the White House to discuss the industry's problems and the adjustment issue, he might have gone far to save himself considerable flak in the trade-policy area, and save the "liberal trade" cause considerable risk from the danger of protectionist measures -- for example, the escape-clause reform proposed in S.1860 and S.1863.

The reform proposed in these bills has various shortcomings, including the involvement of government in devising an industry-adjustment plan before there is even a finding of serious injury warranting any form of government assistance. Moreover, incorporation of an industry-adjustment plan into a proposal for government assistance submitted to the President is optional to the petitioning industry. An adjustment strategy should be obligatory, and the initial responsibility should be that of the industry and its labor force.

Also objectionable is the proposal in these bills that, if an adjustment plan accompanies transmission of the ITC's injury finding to the White House, the President must provide import relief at least substantially equivalent to the import restriction proposed by the Commission. Failure of the President to provide such relief would mandate submission of the case to Congress for ultimate decision. Under existing law, Congress can overrule the President's rejection of import restriction in escape-clause cases by giving effect to ITC remedies and/or devising other ways to help the particular industry. But, unlike the proposed reform, Congressional review and possible action would not result from the programmed routing of the particular 201 case to politics-dominated resolution by Congress if the President deems import relief detrimental to the national interest.

Overall, the proposed reform of the escape clause in these bills may properly be likened to a "can of worms", or a Pandora's box -- in any event, something arduously to be avoided.

S.2099, on the other hand, has considerable merit for reform of the import-relief provisions of the trade legislation. Its recognition of the importance of extensive Presidential discretion (that is, freedom for the President to consider the totality of the national interest) is most commendable, as is its requirement of an industry-adjustment plan (including commitments by industry, labor and federal, state and local governments) as an adjunct of any government import control that may be decided. There are, however, at least two faults with this bill: (1) notwithstanding the required adjustment strategy, the bill would permit up to 13 years of import relief, including possible extensions of the initial import restriction and the possibility of more relief pursuant to a second petition; and (2) the adjustment strategy does not explicitly require reassessment of all statutes and regulations materially affecting the industry's adjustment capability, to determine if there are any inequities that need correcting.

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